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STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

1989 GENERAL ASSEMBLY

AT ITS

EXTRA SESSION 1989

BEGINNING ON

THURSDAY, THE SEVENTH DAY OF DECEMBER, A.D. 1989

AND AT ITS

EXTRA SESSION 1990

BEGINNING ON

TUESDAY, THE SIXTH DAY OF MARCH, A.D. 1990

AND AT ITS

REGULAR SESSION 1990

BEGINNING ON

MONDAY, THE TWENTY-FIRST DAY OF MAY, A.D. 1990

HELD IN THE CITY OF RALEIGH

ISSUED BY

SECRETARY OF STATE RUFUS L. EDMISTEN

PUBLISHED BY AUTHORITY

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1990

TABLE OF CONTENTS

Presiding Officers of the 1989 General Assembly	v
Executive Branch Officers	v
Officers and Members of the Senate	vi
Officers and Members of the House	vii
Legislative Services Commission	ix
Legislative Service Staff Directors	ix
Constitution of North Carolina	xi
Extra Session 1989 Chapter	1
Extra Session 1990 Chapter	2
Regular Session 1990 Chapters	7
Regular Session 1990 Resolutions	975
Certification	1001
Executive Orders	1002
Regular Session 1990 Numerical Index	1127
Extra Session 1989 Index	1131
Extra Session 1990 Index	1131
Session Law Index	1132
Resolution Index	1233

STATE OF NORTH CAROLINA

PRESIDING OFFICERS OF THE 1989 GENERAL ASSEMBLY

JAMES C. GARDNER (R) President of the Senate Nash
JOSEPHUS L. MAVRETIC Speaker of the House
of Representatives Edgecombe

EXECUTIVE BRANCH

(Offices established by the Constitution, filled by
election and comprising the Council of State)

JAMES G. MARTIN (R) Governor Mecklenburg
JAMES C. GARDNER (R) Lieutenant Governor Nash
RUFUS L. EDMISTEN Secretary of State Watauga
EDWARD RENFROW Auditor Johnston
HARLAN E. BOYLES Treasurer Wake
BOB R. ETHERIDGE Superintendent of
Public Instruction Harnett
LACY H. THORNBURG Attorney General Jackson
JAMES A. GRAHAM Commissioner of
Agriculture Rowan
JOHN C. BROOKS Commissioner of Labor Wake
JAMES A. LONG Commissioner of Insurance Alamance

The political affiliation of each legislator and member of the Council of State listed on this and the following pages is Democratic unless designated Republican by the abbreviation (R).

G.S. 147-16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Martin are carried in the appendix to this volume.

1989 GENERAL ASSEMBLY

SENATE OFFICERS

<i>Name</i>	<i>Position</i>	<i>Address</i>
JAMES C. GARDNER	President	Rocky Mount
HENSON P. BARNES	President Pro Tempore	Goldsboro
KENNETH C. ROYALL, JR.	Deputy President Pro Tempore ...	Durham
SYLVIA M. FINK	Principal Clerk	Raleigh
LEROY CLARK, JR	Reading Clerk	Wendell
GERDA B. PLEASANTS	Sergeant-at-Arms	Cary

SENATORS

<i>District</i>	<i>Name</i>	<i>County</i>	<i>Address</i>
1	MARC BASNIGHT	Dare	Manteo
2	FRANK W. BALLANCE	Warren	Warrenton
3	WILLIAM H. BARKER	Pamlico	Oriental
4	A. D. GUY	Onslow	Jacksonville
5	WENDELL MURPHY	Duplin	Rose Hill
6	R. L. MARTIN	Pitt	Bethel
7	FRANKLIN BLOCK	New Hanover	Wrightsville Beach
8	HENSON P. BARNES	Wayne	Goldsboro
9	THOMAS F. TAFT	Pitt	Greenville
10	JAMES E. EZZEL, JR.	Nash	Rocky Mount
11	JAMES D. SPEED	Franklin	Louisburg
12	JOE B. RAYNOR	Cumberland	Fayetteville
12	LURA S. TALLY	Cumberland	Fayetteville
13	KENNETH C. ROYALL, JR.	Durham	Durham
13	RALPH A. HUNT	Durham	Durham
14	JOSEPH E. JOHNSON	Wake	Raleigh
14	WILLIAM W. STATON	Lee	Sanford
14	J. K. SHERRON, JR.	Wake	Raleigh
15	N. LEO DAUGHTRY (R)	Johnston	Smithfield
16	RUSSELL G. WALKER	Randolph	Asheboro
16	HOWARD N. LEE*	Orange	Chapel Hill
17	J. RICHARD CONDER	Richmond	Rockingham
17	AARON W. PLYLER	Union	Monroe
18	R. C. SOLES, JR.	Columbus	Tabor City
19	ROBERT G. SHAW (R)	Guilford	Greensboro
20	MARVIN M. WARD	Forsyth	Winston-Salem
20	TED KAPLAN	Forsyth	Lewisville
21	GEORGE B. DANIEL	Caswell	Yanceyville
22	JAMES C. JOHNSON, JR. (R) .	Cabarrus	Concord
23	BETSY L. COCHRANE(R)	Davie	Advance
23	PAUL S. SMITH (R)	Rowan	Salisbury
24	WILLIAM D. GOLDSTON, JR. .	Rockingham	Eden
24	A. P. SANDS III	Rockingham	Reidsville
25	J. OLLIE HARRIS	Cleveland	Kings Mountain
25	HELEN RHYNE MARVIN	Gaston	Gastonia
25	MARSHALL A. RAUCH	Gaston	Gastonia
26	AUSTIN M. ALLRAN (R)	Catawba	Hickory
26	HOWARD F. BRYAN (R)	Iredell	Statesville
27	DONALD R. KINCAID (R)	Caldwell	Lenoir
27	DANIEL R. SIMPSON (R)	Burke	Morganton
28	ROBERT S. SWAIN	Buncombe	Asheville
28	DENNIS J. WINNER	Buncombe	Asheville
29	CHARLES W. HARDEN (R)	Haywood	Canton
29	ROBERT C. CARPENTER (R) ...	Macon	Franklin
30	DAVID RUSSELL PARNELL	Robeson	Parkton
31	WILLIAM N. MARTIN	Guilford	Greensboro
32	RICHARD C. CHALK, JR.	Guilford	High Point
33	JAMES F. RICHARDSON	Mecklenburg	Charlotte
34	T. L. ODOM	Mecklenburg	Charlotte
35	CONSTANCE K. WILSON(R)**	Mecklenburg	Charlotte

* Howard N. Lee was appointed by Governor Martin 2/9/90, to replace Wanda H. Hunt who resigned effective 1/31/90.

** Constance K. Wilson was appointed by Governor Martin 9/1/89, to replace Laurence A. Cobb, who resigned effective 8/14/89.

HOUSE OFFICERS

<i>Name</i>	<i>Position</i>	<i>Address</i>
JOSEPHUS L. MAVRETIC	Speaker	Crisp, Edgecombe County
R. P. BEARD	Speaker Pro Tempore	Fayetteville, Cumberland County
GRACE A. COLLINS	Principal Clerk	Fuquay-Varina, Wake County
SAM J. BURROW, JR.	Reading Clerk	Cary, Wake County
LARRY P. EAGLES	Sergeant-at-Arms	Tarboro, Edgecombe County

REPRESENTATIVES

<i>District</i>	<i>Name</i>	<i>County</i>	<i>Address</i>
1	VERNON G. JAMES	Pasquotank	Elizabeth City
1	R. M. THOMPSON	Chowan	Edenton
2	HOWARD B. CHAPIN	Beaufort	Washington
3	GERALD L. ANDERSON	Craven	Bridgeton
3	DANIEL T. LILLEY	Lenoir	Kinston
3	BEVERLY M. PERDUE	Craven	New Bern
4	W. BRUCE ETHRIDGE	Onslow	Swansboro
4	ROBERT GRADY (R)	Onslow	Jacksonville
4	WILLIAM D. MILLS	Onslow	Maysville
5	HOWARD J. HUNTER	Hertford	Murfreesboro
6	EUGENE ROGERS	Martin	Williamston
7	THOMAS C. HARDAWAY	Halifax	Enfield
8	JOSEPHUS L. MAVRETIC	Edgecombe	Crisp
9	WALTER B. JONES, JR.	Pitt	Farmville
9	EDWARD N. WARREN	Pitt	Greenville
10	CHARLES W. ALBERTSON	Duplin	Beulaville
11	JOHN KERR	Wayne	Goldsboro
11	JOHN TART	Wayne	Goldsboro
12	EDD NYE	Bladen	Elizabethtown
12	ED BOWEN	Sampson	Harrells
13	A. M. HALL	New Hanover	Wilmington
13	HARRY E. PAYNE	New Hanover	Wilmington
14	E. DAVID REDWINE	Brunswick	Shallotte
15	LEO MERCER	Columbus	Chadbourn
16	DANIEL H. DEVANE	Hoke	Raeford
16	JOHN CALVIN HASTY	Robeson	Maxton
16	SIDNEY A. LOCKS	Robeson	Lumberton
17	C. R. EDWARDS	Cumberland	Fayetteville
17	LUTHER R. JERALDS	Cumberland	Fayetteville
18	R. D. BEARD	Cumberland	Fayetteville
18	JOHN W. HURLEY	Cumberland	Fayetteville
18	ALEX WARNER	Cumberland	Hope Mills
19	CLARENCE P. STEWART	Harnett	Lillington
19	DENNIS A. WICKER	Lee	Sanford
20	BILLY J. CREECH (R)	Johnston	Wilson Mills
20	BARNEY PAUL WOODARD	Johnston	Princeton
21	DANIEL T. BLUE, JR.	Wake	Raleigh
22	JOHN T. CHURCH	Vance	Henderson
22	JAMES W. CRAWFORD, JR.	Granville	Oxford
22	JAMES P. GREEN, SR.*	Vance	Henderson
23	H. M. MICHAUX, JR.	Durham	Durham
23	GEORGE W. MILLER	Durham	Durham
23	SHARON THOMPSON	Durham	Durham
24	ANNE C. BARNES	Orange	Chapel Hill
24	JOE HACKNEY	Orange	Chapel Hill
25	J. FRED BOWMAN	Alamance	Burlington
25	BERTHA M. HOLT	Alamance	Burlington
25	R. SAMUEL HUNT, III	Alamance	Burlington
25	PEGGY WILSON	Rockingham	Madison
26	HERMAN C. GIST	Guilford	Greensboro
27	JOANNE W. BOWIE (R)	Guilford	Greensboro
27	ALBERT S. LINEBERRY, SR.	Guilford	Greensboro
27	FRANK J. SIZEMORE, III (R)	Guilford	Greensboro
28	STEVE ARNOLD (R)	Guilford	High Point
28	STEPHEN WOOD (R)	Guilford	High Point

* James P. Green, Sr. was appointed by Governor Martin 11/16/89, to replace William T. Watkins, who died 8/26/89.

29	MICHAEL P. DECKER (R)	Forsyth	Walkertown
30	ARLIE CULP (R)	Randolph	Ramseur
31	JAMES M. CRAVEN (R)	Moore	Pinebluff
32	DONALD M. DAWKINS	Richmond	Rockingham
33	PRYOR GIBSON	Anson	Wadesboro
34	BOBBY H. BARBEE, SR. (R)	Stanly	Locust
34	H. CLAYTON LOFLIN (R)	Union	Monroe
34	COY C. PRIVETTE (R)	Cabarrus	Kannapolis
34	TIMOTHY N. TALENT (R)	Cabarrus	Concord
35	CHARLOTTE A. GARDNER (R)	Rowan	Salisbury
35	BRADFORD V. LIGON (R)	Rowan	Salisbury
36	LARRY DIGGS (R)	Mecklenburg	Charlotte
37	JERRY C. DOCKHAM(R)*	Davidson	Denton
37	JOE H. HEGE, JR. (R)	Davidson	Lexington
37	JULIA C. HOWARD (R)	Davie	Mocksville
38	HAROLD J. BRUBAKER (R)	Randolph	Asheboro
39	LYONS GRAY(R)**	Forsyth	Winston-Salem
39	THERESA H. ESPOSITO (R)	Forsyth	Winston-Salem
39	FRANK E. RHODES (R)	Forsyth	Winston-Salem
40	DAVID H. DIAMONT	Surry	Pilot Mountain
40	JUDY FRANCES HUNT	Watauga	Blowing Rock
40	WILLIAM E. WILSON (R)	Watauga	Boone
41	JOHN WALTER BROWN (R)	Wilkes	Elkin
41	GEORGE M. HOLMES (R)	Yadkin	Yadkinville
42	LOIS S. WALKER (R)	Iredell	Statesville
43	C. ROBERT BRAWLEY (R)	Iredell	Mooreville
44	J. VERNON ABERNETHY (R)	Gaston	Gastonia
44	W. W. DICKSON (R)	Gaston	Gastonia
44	JOHNATHAN L. RHYNE, JR. (R)	Lincoln	Lincolnton
44	DORIS L. LAIL (R)	Lincoln	Lincolnton
45	DORIS R. HUFFMAN (R)	Catawba	Newton
45	W. STINE ISENHOWER (R)	Catawba	Conover
46	CHARLES F. BUCHANAN (R)	Mitchell	Green Mountain
46	DAVID T. FLAHERTY, JR. (R)	Caldwell	Lenoir
46	GEORGE S. ROBINSON (R)	Caldwell	Lenoir
47	RAY C. FLETCHER	Burke	Valdese
48	JOHN J. HUNT	Cleveland	Lattimore
48	EDITH LEDFORD LUTZ	Cleveland	Lawndale
48	JOHN WEATHERLY (R)	Cleveland	Kings Mountain
49	ROBERT C. HUNTER	McDowell	Marion
50	LARRY T. JUSTUS (R)	Henderson	Hendersonville
51	MARIE W. COLTON	Buncombe	Asheville
51	NARVEL J. CRAWFORD	Buncombe	Asheville
51	GORDON H. GREENWOOD	Buncombe	Black Mountain
51	MARTIN L. NESBITT	Buncombe	Asheville
52	CHARLES M. BEALL	Haywood	Clyde
52	LISTON B. RAMSEY	Madison	Marshall
53	MARTY KIMSEY (R)	Macon	Franklin
54	JOHN B. McLAUGHLIN	Mecklenburg	Newell
55	DAVID G. BALMER (R)	Mecklenburg	Charlotte
56	JO GRAHAM FOSTER	Mecklenburg	Charlotte
57	HARRY GRIMMER (R)	Mecklenburg	Matthews
58	RUTH M. EASTERLING	Mecklenburg	Charlotte
59	W. PETE CUNNINGHAM	Mecklenburg	Charlotte
60	HOWARD C. BARNHILL	Mecklenburg	Charlotte
61	JAMES AUTHUR POPE (R)	Wake	Raleigh
62	PAUL STAM, JR. (R)	Wake	Apex
63	MARGARET STAMEY	Wake	Raleigh
64	BETTY H. WISER	Wake	Raleigh
65	AARON E. FUSSELL	Wake	Raleigh
66	ANNIE BROWN KENNEDY	Forsyth	Winston-Salem
67	LOGAN BURKE	Forsyth	Winston-Salem
68	Incorporated into District No. 23 as ordered by the Federal Courts.		
69	Incorporated into District No. 23 as ordered by the Federal Courts.		
70	MILTON F. FITCH, Jr.	Wilson	Wilson
71	LARRY E. ETHERIDGE (R)	Wilson	Wilson
72	ROY A. COOPER, III	Nash	Rocky Mount

* Jerry C. Dockham was appointed by Governor Martin 5/14/90, to replace Charles L. Cromer, who resigned effective 4/17/90.

** Lyons Gray was appointed by Governor Martin 9/27/89, to replace Ann Q. Duncan, who resigned effective 9/27/89.

LEGISLATIVE SERVICES COMMISSION

SENATE PRESIDENT PRO TEMPORE HENSON P. BARNES,
Cochairman

HOUSE SPEAKER JOSEPHUS L. MAVRETIC, *Cochairman*

SEN. MARC BASNIGHT
SEN. BETSY L. COCHRANE
SEN. OLLIE HARRIS
SEN. MARSHALL A. RAUCH
SEN. KENNETH C. ROYALL, JR.
SEN. JOE RAYNOR

REP. J. VERNON ABERNETHY
REP. DANIEL T. BLUE, JR.
REP. LARRY T. JUSTICE
REP. GEORGE M. HOLMES
REP. GEORGE S. ROBINSON
REP. R. M. THOMPSON

LEGISLATIVE SERVICES STAFF DIRECTORS

GEORGE R. HALL, JR.	Legislative Administrative Officer
GERRY F. COHEN	Director of Legislative Drafting
THOMAS L. COVINGTON	Director of Fiscal Research
M. GLENN NEWKIRK	Director of Legislative Automated Systems
TERRENCE D. SULLIVAN	Director of Research
J. MICHAEL MINSHEW	Building Superintendent and Chief of Security

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. *The equality and rights of persons.* We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Sec. 2. *Sovereignty of the people.* All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Sec. 3. *Internal government of the State.* The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

Sec. 4. *Secession prohibited.* This State shall ever remain a member of the American Union; the people thereof are part of the American Nation; there is no right on the part of this State to secede; and all attempts from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

Sec. 5. *Allegiance to the United States.* Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Sec. 6. *Separation of powers.* The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Sec. 7. *Suspending laws.* All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

Sec. 8. *Representation and taxation.* The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

Sec. 9. *Frequent elections.* For redress of grievances and for amending and strengthening the laws, elections shall be often held.

Sec. 10. *Free elections.* All elections shall be free.

Sec. 11. *Property qualifications.* As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

Sec. 12. *Right of assembly and petition.* The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.

Sec. 13. *Religious liberty.* All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

Sec. 14. *Freedom of speech and press.* Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

Sec. 15. *Education.* The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Sec. 16. *Ex post facto laws.* Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

Sec. 17. *Slavery and involuntary servitude.* Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

Sec. 18. *Court shall be open.* All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Sec. 19. *Law of the land; equal protection of the laws.* No person shall be taken, imprisoned, or dispossessed of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Sec. 20. *General warrants.* General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

Sec. 21. *Inquiry into restraints on liberty.* Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Sec. 22. *Modes of prosecution.* Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in noncapital cases.

Sec. 23. *Rights of accused.* In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Sec. 24. *Right of jury trial in criminal cases.* No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

Sec. 25. *Right of jury trial in civil cases.* In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

Sec. 26. *Jury service.* No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

Sec. 27. *Bail, fines, and punishments.* Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sec. 28. *Imprisonment for debt.* There shall be no imprisonment for debt in this State, except in cases of fraud.

Sec. 29. *Treason against the State.* Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Sec. 30. *Militia and the right to bear arms.* A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Sec. 31. *Quartering of soldiers.* No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 32. *Exclusive emoluments.* No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Sec. 33. *Hereditary emoluments and honors.* No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

Sec. 34. *Perpetuities and monopolies.* Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

Sec. 35. *Recurrence to fundamental principles.* A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Sec. 36. *Other rights of the people.* The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

ARTICLE II

LEGISLATIVE

Section 1. *Legislative power.* The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Sec. 2. *Number of Senators.* The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. *Senate districts; apportionment of Senators.* The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the District that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. *Number of Representatives.* The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. *Representative districts: apportionment of Representatives.* The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 6. *Qualifications for Senator.* Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

Sec. 7. *Qualifications for Representative.* Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election.

Sec. 8. *Elections.* The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

Sec. 9. *Term of office.* The term of office of Senators and Representatives shall commence on the first day of January next after their election.

Sec. 10. *Vacancies.* Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

Sec. 11. *Sessions.*

(1) *Regular Sessions.* The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) *Extra sessions on legislative call.* The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

Sec. 12. *Oath of members.* Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Sec. 13. *President of the Senate.* The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

Sec. 14. *Other officers of the Senate.*

(1) *President Pro Tempore - succession to presidency.* The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or

removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) *President Pro Tempore - temporary succession.* During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) *Other officers.* The Senate shall elect its other officers.

Sec. 15. *Officers of the House of Representatives.* The House of Representatives shall elect its Speaker and other officers.

Sec. 16. *Compensation and allowances.* The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

Sec. 17. *Journals.* Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

Sec. 18. *Protests.* Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

Sec. 19. *Record votes.* Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Sec. 20. *Powers of the General Assembly.* Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Sec. 21. *Style of the acts.* The style of the acts shall be: "The General Assembly of North Carolina enacts:".

Sec. 22. *Action on bills.* All bills and resolutions of a legislative nature shall be read three times in each house before they become laws, and shall be signed by the presiding officers of both houses.

Sec. 23. *Revenue bills.* No laws shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

Sec. 24. *Limitations on local, private, and special legislation.*

(1) *Prohibited subjects.* The General Assembly shall not enact any local, private, or special act or resolution:

- (a) Relating to health, sanitation, and the abatement of nuisances;
- (b) Changing the names of cities, towns, and townships;
- (c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;
- (d) Relating to ferries or bridges;
- (e) Relating to non-navigable streams;
- (f) Relating to cemeteries;
- (g) Relating to the pay of jurors;
- (h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;
- (i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;
- (j) Regulating labor, trade, mining, or manufacturing;
- (k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;
- (l) Giving effect to informal wills and deeds;
- (m) Granting a divorce or securing alimony in any individual case;

- (n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) *Repeals.* Nor shall the General Assembly enact any such local, private, or special act by partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) *Prohibited acts void.* Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) *General laws.* The General Assembly may enact general laws regulating the matters set out in this Section.

ARTICLE III

EXECUTIVE

Section 1. *Executive power.* The executive power of the State shall be vested in the Governor.

Sec. 2. *Governor and Lieutenant Governor: election, term, and qualifications.*

(1) *Election and term.* The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Qualifications.* No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to the Office of Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office.

Sec. 3. *Succession to office of Governor.*

(1) *Succession as Governor.* The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify.

The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) *Succession as Acting Governor.* During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) *Physical incapacity.* The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) *Mental incapacity.* The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

(5) *Impeachment.* Removal of the Governor from office for any other cause shall be by impeachment.

Sec. 4. *Oath of office for Governor.* The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of governor.

Sec. 5. *Duties of Governor.*

(1) *Residence.* The Governor shall reside at the seat of government of this State.

(2) *Information to General Assembly.* The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) *Budget.* The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) *Execution of laws.* The Governor shall take care that the laws be faithfully executed.

(5) *Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) *Clemency.* The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) *Extra sessions.* The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) *Appointments.* The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) *Information.* The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) *Administrative reorganization.* The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

Sec. 6. *Duties of the Lieutenant Governor.* The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

Sec. 7. *Other elective officers.*

(1) *Officers.* A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Duties.* Their respective duties shall be prescribed by law.

(3) *Vacancies.* If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) *Interim officers.* Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) *Acting officers.* During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) *Determination of incapacity.* The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) *Special Qualifications for Attorney General.* Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General.

Sec. 8. *Council of State.* The Council of State shall consist of the officers whose offices are established by this Article.

Sec. 9. *Compensation and allowances.* The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed by law, which shall not be diminished during the time for which they have been chosen.

Sec. 10. *Seal of State.* There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina". All grants or commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State of North Carolina", and signed by the Governor.

Sec. 11. *Administrative departments.* Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

ARTICLE IV

JUDICIAL

Section 1. *Judicial power.* The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a coordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

Sec. 2. *General Court of Justice.* The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Sec. 3. *Judicial powers of administrative agencies.* The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Sec. 4. *Court for the Trial of Impeachments.* The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the Court. A majority of members shall be necessary to a quorum, and no person shall be convicted without the concurrence

of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 5. *Appellate division.* The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Sec. 6. *Supreme Court.*

(1) *Membership.* The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge these duties.

(2) *Sessions of the Supreme Court.* The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Sec. 7. *Court of Appeals.* The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Sec. 8. *Retirement of Justices and Judges.* The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired. The General Assembly shall also prescribe maximum age limits for service as a Justice or Judge.

Sec. 9. *Superior Courts.*

(1) *Superior Court districts.* The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) *Open at all times; sessions for trial of cases.* The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) *Clerks.* A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Sec. 10. *District Courts.* The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office.

Sec. 11. *Assignment of Judges.* The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of

District Judges within each local court district shall be made by the Chief District Judge.

Sec. 12. *Jurisdiction of the General Court of Justice.*

(1) *Supreme Court.* The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts. The Supreme Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission.

(2) *Court of Appeals.* The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.

(3) *Superior Court.* Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) *District Courts; Magistrates.* The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) *Waiver.* The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) *Appeals.* The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

Sec. 13. *Forms of action; rules of procedure.*

(1) *Forms of action.* There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) *Rules of procedure.* The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Sec. 14. *Waiver of jury trial.* In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Sec. 15. *Administration.* The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Sec. 16. *Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.* Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

Sec. 17. *Removal of Judges, Magistrates and Clerks.*

(1) *Removal of Judges by the General Assembly.* Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) *Additional method of removal of Judges.* The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this Section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) *Removal of Magistrates.* The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) *Removal of Clerks.* Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 10 days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Sec. 18. *District Attorney and Prosecutorial Districts.*

(1) *District Attorneys.* The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) *Prosecution in District Court Division.* Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Sec. 19. *Vacancies.* Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be

filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Sec. 20. *Revenues and expenses of the judicial department.* The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Sec. 21. *Fees, salaries and emoluments.* The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

Sec. 22. *Qualification of Justices and Judges.* Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

ARTICLE V

FINANCE

Section 1. *No capitation tax to be levied.* No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Sec. 2. *State and local taxation.*

(1) *Power of taxation.* The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) *Classification.* Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) *Exemptions.* Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding \$300, any personal property. The General Assembly may exempt from taxation not exceeding \$1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) *Special tax areas.* Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

(5) *Purposes of property tax.* The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) *Income tax.* The rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) *Contracts.* The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

Sec. 3. *Limitations upon the increase of State debt.*

(1) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;
- (b) to supply an unforeseen deficiency in the revenue;
- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections, or to repel invasions;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
- (f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium.

(2) *Gift or loan of credit regulated.* The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) *Definitions.* A debt is incurred within the meaning of this Section when the State borrows money. A pledge of the faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(4) *Certain debts barred.* The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

(5) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 4. *Limitations upon the increase of local government debt.*

(1) *Regulation of borrowing and debt.* The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

(2) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;
- (b) to supply an unforeseen deficiency in the revenue;
- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
- (f) for purposes authorized by general laws uniformly applicable throughout the State, to the extent of two-thirds of the amount by which the unit's outstanding indebtedness shall have been reduced during the next preceding fiscal year.

(3) *Gift or loan of credit regulated.* No county, city or town, special district, or other unit of local government shall give or lend its

credit in aid of any person, association, or corporation, except for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote thereon.

(4) *Certain debts barred.* No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

(5) *Definitions.* A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority, or agency of local government borrows money. A pledge of faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(6) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 5. *Acts levying taxes to state objects.* Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Sec. 6. *Inviolability of sinking funds and retirement funds.*

(1) *Sinking funds.* The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created, except that these funds may be invested as authorized by law.

(2) *Retirement funds.* Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used

by the State, any State agency, State officer, public officer, or public employee.

Sec. 7. *Drawing public money.*

(1) *State treasury.* No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

(2) *Local treasury.* No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Sec. 8. *Health care facilities.* Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State, counties, cities or towns, and other State and local governmental entities to issue revenue bonds to finance or refinance for any such governmental entity or any nonprofit private corporation, regardless of any church or religious relationship, the cost of acquiring, constructing, and financing health care facility projects to be operated to serve and benefit the public; provided, no cost incurred earlier than two years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from the revenues, gross or net, of any such projects and any other health care facilities of any such governmental entity or nonprofit private corporation pledged therefor; shall not be secured by a pledge of the full faith and credit, or deemed to create an indebtedness requiring voter approval of any governmental entity; and may be secured by an agreement which may provide for the conveyance of title of, with or without consideration, any such project or facilities to the governmental entity or nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto for nonprofit private corporations.

Sec. 9. *Capital projects for industry.* Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to authorize counties to create authorities to issue revenue bonds to finance, but not to refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from

private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 10. *Joint ownership of generation and transmission facilities.* In addition to other powers conferred upon them by law, municipalities owning or operating facilities for the generation, transmission or distribution of electric power and energy and joint agencies formed by such municipalities for the purpose of owning or operating facilities for the generation and transmission of electric power and energy (each, respectively, "a unit of municipal government") may jointly or severally own, operate and maintain works, plants and facilities, within or without the State, for the generation and transmission of electric power and energy, or both, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale (each, respectively, "a co-owner") within this State or any state contiguous to this State, and may enter into and carry out agreements with respect to such jointly owned facilities. For the purpose of financing its share of the cost of any such jointly owned electric generation or transmission facilities, a unit of municipal government may issue its revenue bonds in the manner prescribed by the General Assembly, payable as to both principal and interest solely from and secured by a lien and charge on all or any part of the revenue derived, or to be derived, by such unit of municipal government from the ownership and operation of its electric facilities; provided, however, that no unit of municipal government shall be liable, either jointly or severally, for any acts, omissions or obligations of any co-owner, nor shall any money or property of any unit of municipal government be credited or otherwise applied to the account of any co-owner or be charged with any debt, lien or mortgage as a result of any debt or obligation of any co-owner.

Sec. 11. *Capital projects for agriculture.* Notwithstanding any other provision of the Constitution the General Assembly may enact general laws to authorize the creation of an agency to issue revenue bonds to finance the cost of capital projects consisting of agricultural facilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenue or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 12. *Higher Education Facilities.* Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto.

Sec. 13. *Seaport and airport facilities.*(1) Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies.

- (a) To acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interest therein;
- (b) To finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and

passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and

- (c) To secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State.

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. *Who may vote.* Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. *Qualifications of voter.*

(1) *Residence period for State elections.* Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) *Residence period for presidential elections.* The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) *Disqualification of felon.* No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Sec. 3. *Registration.* Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

Sec. 4. *Qualification for registration.* Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. *Elections by people and General Assembly.* All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. *Eligibility to elective office.* Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. *Oath.* Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as so help me God."

Sec. 8. *Disqualifications for office.* The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. *Dual office holding.*

(1) *Prohibitions.* It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) *Exceptions.* The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Sec. 10. *Continuation in office.* In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

ARTICLE VII

LOCAL GOVERNMENT

Section 1. *General Assembly to provide for local government.* The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this

Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

Sec. 2. *Sheriffs.* In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. *Merged or consolidated counties.* Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

ARTICLE VIII

CORPORATIONS

Section 1. *Corporate charters.* No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general acts may be altered

from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

Sec. 2. *Corporations defined.* The term "corporation" as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

ARTICLE IX

EDUCATION

Section 1. *Education encouraged.* Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Sec. 2. *Uniform system of schools.*

(1) *General and uniform system; term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) *Local responsibility.* The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

Sec. 3. *School attendance.* The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Sec. 4. *State Board of Education.*

(1) *Board.* The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one

shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) *Superintendent of Public Instruction.* The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Sec. 5. *Powers and duties of Board.* The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Sec. 6. *State school fund.* The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Sec. 7. *County school fund.* All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

Sec. 8. *Higher education.* The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and

expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Sec. 9. *Benefits of public institutions of higher education.* The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

Sec. 10. *Escheats.*

(1) *Escheats prior to July 1, 1971.* All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2) *Escheats after June 30, 1971.* All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Section 1. *Personal property exemptions.* The personal property of any resident of this State, to a value fixed by the General Assembly but not less than \$500, to be selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Sec. 2. *Homestead exemptions.*

(1) *Exemption from sale; exceptions.* Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than \$1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) *Exemption for benefit of children.* The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) *Exemption for benefit of surviving spouse.* If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) *Conveyance of homestead.* Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse.

Sec. 3. *Mechanics' and laborers' liens.* The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming the exemption or a mechanics's lien for work done on the premises.

Sec. 4. *Property of married women secured to them.* The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

Sec. 5. *Insurance.* A person may insure his or her own life for the sole use and benefit of his or her spouse or children or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured

during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. *Punishments.* The following punishments only shall be known to the laws of this State: death, imprisonment, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

Sec. 2. *Death punishment.* The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Sec. 3. *Charitable and correctional institutions and agencies.* Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

Sec. 4. *Welfare policy; board of public welfare.* Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

ARTICLE XII

MILITARY FORCES

Section 1. *Governor is Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

ARTICLE XIII

CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section 1. *Convention of the People.* No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and unless the proposition "Convention or No Convention" is first submitted to the qualified voters of the State at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act of submitting the convention proposition, propose limitations upon the authority of the Convention; and if a majority of the votes cast upon the proposition are in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention has been called.

Sec. 2. *Power to revise or amend Constitution reserved to people.* The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this Article, but in no other way.

Sec. 3. *Revision or amendment by Convention of the People.* A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

Sec. 4. *Revision or amendment by legislative initiation.* A proposal of a new or revised Constitution or an amendment or amendments to

this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

ARTICLE XIV

MISCELLANEOUS

Section 1. *Seat of government.* The permanent seat of government of this State shall be at the City of Raleigh.

Sec. 2. *State boundaries.* The limits and boundaries of the State shall be and remain as they now are.

Sec. 3. *General laws defined.* Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

Sec. 4. *Continuity of laws; protection of office holders.* The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating

any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.

Sec. 5. *Conservation of natural resources.* It shall be the policy of this State to conserve and protect its land and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by resolution adopted by a vote of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the "State Nature and Historic Preserve," and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes.

EXTRA SESSION 1989

S.B. 1

CHAPTER 1

AN ACT TO APPROVE ENTRY BY THE GOVERNOR INTO AN INTERSTATE AGREEMENT FOR THE MANAGEMENT OF HAZARDOUS WASTE, AS DEFINED IN G.S. 130A-290, AS SET OUT IN THE DOCUMENT ENTITLED "EXPANSION OF THE SARA CAPACITY ASSURANCE REGIONAL AGREEMENT" AND ATTACHMENTS AS FILED WITH THE DEPARTMENT OF THE SECRETARY OF STATE ON 5 DECEMBER 1989 AND TO ADJOURN THE 1989 EXTRA SESSION OF THE GENERAL ASSEMBLY SINE DIE.

Whereas, the Governor of North Carolina has reached an agreement for the management of hazardous waste with the Governors of the State of Alabama, the Commonwealth of Kentucky, the State of South Carolina, and the State of Tennessee; and

Whereas, G.S. 130B-5(c) requires the Governor to submit any such agreement to the General Assembly for its approval and provides that no such agreement shall be effective until approved by the General Assembly; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. As used in this act, the terms "hazardous waste" and "CERCLA/SARA" have the same meaning as set out in G.S. 130A-290.

Sec. 2. Pursuant to the provisions of G.S. 130B-5(c), the General Assembly hereby approves entry by the Governor into an interstate agreement for the management of hazardous waste as set out in the document entitled "Expansion of the SARA Capacity Assurance Regional Agreement" and attachments as filed with the Department of the Secretary of State on 5 December 1989, which document and attachments are incorporated into this act by reference.

Sec. 3. The House of Representatives and the Senate, constituting the 1989 Extra Session of the General Assembly, do adjourn the 1989 Extra Session *sine die* upon ratification of this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of December, 1989.

EXTRA SESSION 1990

H.B. 1

CHAPTER 1

AN ACT TO AMEND THE PRISON POPULATION STABILIZATION ACT TO RAISE THE POPULATION CAP AND TO ADJOURN THE 1990 EXTRA SESSION OF THE GENERAL ASSEMBLY SINE DIE.

The General Assembly of North Carolina enacts:

Section 1. Effective March 28, 1990, G.S. 148-4.1 reads as rewritten:

" § 148-4.1. *Release of inmates.*

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable level, he shall direct the Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose.

(b) Except as provided in subsection (c) and (e), only inmates who are otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of this Chapter may be released under this section.

(c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible for early parole under this section nine months prior to the discharge date otherwise applicable, and six months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2.

(d) If the number of prisoners ~~serving a sentence in the State prison system or otherwise housed in the State prison system~~ housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of ~~18,000~~ 18,525 for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the ~~number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system~~ prison population to ninety-seven percent (97%) of ~~18,000~~ 18,525.

From the date of the notification until the ~~number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system~~ prison population has been reduced to ninety-seven percent (97%) of ~~18,000~~ 18,525, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the

State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred.

(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the ~~number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system~~ prison population has been reduced to ninety-seven percent (97%) of ~~18,000, 18,525~~, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving.

(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed ~~18,000, 18,525~~.

(g) In order to meet the requirements of this section, the ~~The~~ Parole Commission shall not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, ~~or under G.S. 90-95(h) of a drug trafficking offense offense, or under G.S. 14-17, in order to meet the requirements of this section.~~ The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A."

Sec. 2.1. Effective May 15, 1990, G.S. 148-4.1(d) as amended by Section 1 of this act reads as rewritten:

"(d) If the number of prisoners housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of ~~18,525- 18,650~~ for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of ~~18,525, 18,650~~.

From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of ~~18,525, 18,650~~, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred."

Sec. 2.2. Effective May 15, 1990, G.S. 148-4.1(e) as amended by Section 1 of this act reads as rewritten:

"(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of ~~18,525~~, 18,650, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving."

Sec. 2.3. Effective May 15, 1990, G.S. 148-4.1(f) as amended by Section 1 of this act reads as rewritten:

"(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed ~~18,525~~, 18,650."

Sec. 3.1. Effective June 15, 1990, G.S. 148-4.1(d) as amended by Sections 1 and 2.1 of this act reads as rewritten:

"(d) If the number of prisoners housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of ~~18,650~~ 18,715 for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of ~~18,650~~, 18,715."

From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of ~~18,650~~, 18,715, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred."

Sec. 3.2. Effective June 15, 1990, G.S. 148-4.1(e) as amended by Sections 1 and 2.2 of this act reads as rewritten:

"(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of ~~18,650~~, 18,715, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving."

Sec. 3.3. Effective June 15, 1990, G.S. 148-4.1(f) as amended by Sections 1 and 2.3 of this act reads as rewritten:

"(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed ~~18,650~~, 18,715."

Sec. 4. Funds to implement the provisions of this act shall come from funds already appropriated to the Department of Correction for the 1989-90 fiscal year.

Sec. 5. The House of Representatives and the Senate, constituting the 1990 Extra Session of the General Assembly, do adjourn the 1990 Extra Session *sine die* upon ratification of this act.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of March, 1990.

REGULAR SESSION 1990

H.B. 1019

CHAPTER 803

AN ACT TO EXEMPT SECURITIES DESIGNATED OR APPROVED FOR DESIGNATION UPON NOTICE OF ISSUANCE ON THE NATIONAL ASSOCIATION OF SECURITIES DEALERS AUTOMATED QUOTATION NATIONAL MARKET SYSTEM FROM THE REGISTRATION AND FILING REQUIREMENTS OF THE NORTH CAROLINA SECURITIES ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 78A-16 is amended by adding a new subdivision to read:

"(15) Any security listed or approved for listing upon notice of issuance on an exchange registered with the United States Securities and Exchange Commission or quoted or approved for quotation upon notice of issuance on an automated quotation system operated by a national securities association registered with the United States Securities and Exchange Commission, provided such security or class of securities, exchange or system is approved by rule of the Administrator; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing."

Sec. 2. G.S. 78A-18(a) reads as rewritten:

"(a) The Administrator may by order deny or revoke any exemption specified in subdivisions (8), (9), ~~or (11)~~ (11), or (15) of G.S. 78A-16 or in 78A-17 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the Administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is

ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to all interested persons, may not modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated G.S. 78A-24 or 78A-49(d) by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order."

Sec. 3. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 31st day of May, 1990.

H.B. 2118

CHAPTER 804**AN ACT TO REVISE THE MANNER OF ELECTION OF THE
HIGH POINT CITY BOARD OF EDUCATION.**

The General Assembly of North Carolina enacts:

Section 1. (a) The High Point City Board of Education shall consist of seven members who shall be elected in a nonpartisan election as provided by this act.

(b) The qualified voters of each Ward shall elect two members who reside in such Ward, as described in Section 3 of this act, and one member shall be elected by all the qualified voters of the High Point City School Administrative Unit.

(c) Except as provided by Section 2 of this act, members shall serve staggered terms of four years.

(d) Except as provided by Section 4 of this act, the initial election under this act shall be held at the November 1990 General Election. The election shall be held, beginning in 1993, at the same time as the regular election for the High Point City Council, and, except as otherwise provided herein, shall be held and conducted under the laws applicable to nonpartisan elections as provided in Articles 23 and 24 of Chapter 163 of the General Statutes. No primary election shall be held. Results shall be determined by plurality in accordance with G.S. 163-292. Notice of candidacy shall be filed as provided in G.S. 163-294.2, except that in 1990, notice of candidacy shall be filed not earlier than 12:00 noon on the second business day after this act is approved by the United States Department of Justice under Section 5 of the Voting Rights Act of 1965, and not later than 12:00 noon on the first Wednesday in September.

(e) The election shall be held and conducted by the Guilford County Board of Elections.

Sec. 2. (a) At the 1990 election, the candidate from each Ward receiving the highest number of votes shall be elected to a five-year term, and the candidate in that Ward receiving the next highest number of votes shall be elected to a three-year term. At the 1990 election, the at-large candidate receiving the highest number of votes shall be elected to a five-year term.

(b) In 1993 and quadrennially thereafter, one member shall be elected from each Ward. In 1995 and quadrennially thereafter, one member shall be elected at large and one member shall be elected from each Ward.

Sec. 3. (a) Wards for the purposes of this act shall consist of the following described areas, to the extent they are within the High Point City School Administrative Unit, and precinct boundaries are as shown on the Guilford County Board of Election Map dated January 1989:

Ward One consists of High Point Precincts 8, 9, 16, 17, 19, 20, 23, 24, and Colfax;

Ward Two consists of High Point Precincts 5, 6, 7, 11, 12, and 22; and

Ward Three consists of High Point Precincts 1, 2, 3, 4, 10, 13, 14, 15, and 18.

(b) The Board of Education shall have authority to revise Ward boundaries as provided by this subsection. The Board of Education may revise them only for the purpose of (i) accounting for territory annexed to or excluded from the city school administrative unit, and (ii) correcting population imbalances among the Wards shown by a new decennial federal census. When the decennial federal census has been returned, or when territory has been annexed to or excluded from the city school administrative unit, the Board of Education shall revise the Wards if they no longer comply with federal constitutional requirements or the requirements of Section 5 of the Voting Rights Act so that the Wards are in compliance. Changes in Ward boundaries do not affect the eligibility of an incumbent to finish the remainder of the member's term.

Sec. 4. The Attorney for the High Point City School Administrative Unit shall immediately upon ratification of this act submit this act to the United States Department of Justice for approval under Section 5 of the Voting Rights Act of 1965. If such approval comes after the third Monday in August 1990, then the effect of such approval is that the election will not be held in November of 1990, as provided in Section 1(d) of this act, but instead will be held at the same time as the election for High Point City Council in 1991, and

the initial terms of office shall be for four years and two years, instead of for five years and three years, as provided by Section 2 of this act.

Sec. 5. At the first meeting in December following the election in November, which is held after the commencement of the new terms of office, the Board shall elect one of its members to serve as chairman and one as vice-chairman, to serve until the similar meeting after the next election.

Sec. 6. Whenever a vacancy occurs, other than by expiration of term, it shall be filled for the unexpired term by appointment by the City Council of High Point. If the vacancy is in a Ward seat, the person appointed must be a resident of that Ward.

Sec. 7. A member of the Board of Education elected from a Ward seat who moves residence outside of that Ward but still within the High Point City School Administrative Unit may finish the remainder of the term. A member of the Board of Education who moves residence outside the High Point City School Administrative Unit vacates office.

Sec. 8. The term of office shall commence on the first Monday in December after the election. Terms of the incumbent members of the High Point City Board of Education serving under Chapter 566, Session Laws of 1973, shall terminate upon the qualification of their successors under this act.

Sec. 9. The status of Chapter 566, Session Laws of 1973, under Section 5 of the Voting Rights Act of 1965 does not affect the validity of any action taken by the High Point City Board of Education since the first Monday of December of 1975, and such actions are hereby ratified, validated, and confirmed.

Sec. 10. Effective on the qualification of the initial High Point City Board of Education under this act, Chapter 566, Session Laws of 1973, is repealed.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1990.

S.B. 1352

CHAPTER 805

AN ACT TO CLARIFY USE OF THE TERM "BANK,"
"BANKING," "BANKER," OR "TRUST" IN CONNECTION
WITH A BUSINESS.

The General Assembly of North Carolina enacts:

Section 1. G. S. 53-127 reads as rewritten:

"§ 53-127. Use of "bank," "banking," or "trust" in corporate name.
Unlawful use of terms indicating that business is bank or trust company.

(a) Definitions. The following definitions apply in this section.

- (1) Banking. The business of receiving or soliciting money on deposit.
- (2) Banking entity. A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Administrator of Savings Institutions under Chapter 54B or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law.
- (3) Nonbanking entity. A person, partnership, corporation, or other entity that is not a banking entity.

(b) Restrictions. No nonbanking entity may use any sign or written or printed paper indicating that it is a bank, savings bank, trust company, or place of banking. No entity may use the word 'bank,' 'savings bank,' 'banking,' 'banker,' or 'trust company,' or the equivalent or plural of any of these words in connection with any business other than that of banking. This section does not prohibit an individual from acting in a trust capacity.

(c) Exceptions.

- (1) A nonbanking entity may use any of the terms listed above in its name if the context or remaining words show clearly that the business is not a bank or trust company and is not engaged in the banking or trust business.
- (2) A nonbanking entity may use any of the terms listed above where the term is the proper name of a principal or former principal in the entity and the use of the name is made in good faith and not in an effort to deceive the public.
- (3) A corporation that is a bank holding company as defined in G.S. 53-226(2) or a savings and loan holding company as defined in G.S. 54B-261(d) may use the words 'bank,' 'banker,' and 'trust company,' and the equivalent and plural of these words in its name and may use a name similar to that of any of its subsidiary banks or stock associations.
- (4) A corporation incorporated before January 1, 1905, may retain the word 'trust' in its name, although it does not transact a business that requires examination by the Commissioner of Banks.

(d) Penalty. Violation of this section is a misdemeanor, punishable by a fine of up to five hundred dollars (\$500.00).

Except for savings and loan associations acting pursuant to the authority granted in G.S. 54B-26, no corporation shall hereafter be chartered under the laws of this State with the words "bank,"

~~"banking," or "trust" as a part of its name except corporations reporting to and under the supervision of the Commissioner of Banks, or corporations under the supervision of the Commissioner of Insurance; nor shall any corporate name be amended so as to include the words "bank," "banking," "banker," or "trust," unless the corporation be under such supervision. Except for savings and loan associations acting pursuant to the authority granted in G.S. 54B-26, no person, association, firm or corporation domiciled within the State of North Carolina except corporations, persons, associations, or firms reporting to and under the supervision of the Commissioner of Banks or under the supervision of the Commissioner of Insurance, shall therein advertise or put forth any sign as bank, banking, banker or trust company, or use the word "bank," "banking," "banker," or "trust," as a part of its name and title, or in any way solicit or receive deposits or transact business as a trust company; Provided, that this Chapter shall not be held to prevent any individual as such from acting in any trust capacity as heretofore; Provided, further, that it shall be lawful for any corporation incorporated prior to January 1, 1905, to retain the word "trust" in the name of said corporation, though it does not transact a banking business or such other business as requires its examination by the Commissioner of Banks or the Commissioner of Insurance.~~

~~Any violation of the provisions of this section shall be a misdemeanor, and upon conviction thereof the offender shall be fined in a sum not exceeding five hundred dollars (\$500.00) for each offense."~~

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1990.

H.B. 204

CHAPTER 806

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE SAVINGS INSTITUTIONS LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 54B-30(5) reads as rewritten:

"(5) Within 60 days after approval of the proceedings by the Administrator, the association shall file an application, in the manner prescribed or authorized by the laws and regulations of the United States, to consummate the conversion to a federal association. A copy of the charter or authorization issued to such association by the ~~Federal Home Loan Bank Board~~, federal regulatory authority, or a

certificate showing the organization or conversion of such association into a federal savings and loan association, and upon such filing with the Administrator the association shall cease to be a State association and shall be a federal association."

Sec. 2. G.S. 54B-33(f) reads as rewritten:

"(f) The administrator may promulgate such rules and regulations as may be necessary to govern conversions; provided, however, that such rules and regulations as may be promulgated by the Administrator shall be equal to or exceed the requirements for conversion imposed by the rules and regulations governing conversions of federal chartered mutual savings and loan associations of the Federal Home Loan Bank Board as set forth in the Federal Register, Vol. 44, No. 62, Thursday, March 29, 1979, entitled 'Part 563b Conversion From Mutual to Stock Form' as these may be amended from time to time and other applicable rules and regulations effective as of the date of ratification, associations."

Sec. 3. G.S. 54B-48.2 reads as rewritten:

"§ 54B-48.2. *Definitions.*

Notwithstanding the provisions of G.S. 54B-4, as used in this Article, unless the context requires otherwise:

- (1) 'Acquire', as applied to an association or a savings and loan holding company, means any of the following actions or transactions:
 - a. The merger or consolidation of an association with another association or savings and loan holding company or a savings and loan holding company with another savings and loan holding company.
 - b. The acquisition of the direct or indirect ownership or control of voting shares of an association or savings and loan holding company if, after the acquisition, the acquiring association or savings and loan holding company will directly or indirectly own or control more than five percent (5%) of any class of voting shares of the acquired association or savings and loan holding company.
 - c. The direct or indirect acquisition of all or substantially all of the assets of an association or savings and loan holding company.
 - d. The taking of any other action that would result in the direct or indirect control of an association or savings and loan holding company.
- (2) 'Administrator' means the Administrator of the Savings Institutions Division.

- (3) 'Association' means a mutual or capital stock savings and loan association, building and loan association or savings bank chartered under the laws of any one of the states or ~~by the Federal Home Loan Bank Board, pursuant to the 'Home Owners' Loan Act of 1933', 12 U.S.C. Section 1464, as amended,~~ under the laws of the United States.
- (4) 'Branch office' means any office at which an association accepts deposits. The term branch office does not include:
 - a. Unmanned automatic teller machines, point-of-sale terminals, or similar unmanned electronic banking facilities at which deposits may be accepted;
 - b. Offices located outside the United States; and
 - c. Loan production offices, representative offices, service corporation offices, or other offices at which deposits are not accepted.
- (5) 'Company' means that which is set forth in the Federal Savings and Loan Holding Company Act, 12 U.S.C. Section 1730a(a)(1)(C), as amended.
- (6) 'Control' means that which is set forth in the Federal Savings and Loan Holding Company Act, 12 U.S.C. Section 1730a(a)(2), as amended.
- (7) 'Deposits' means all demand, time, and savings deposits, without regard to the location of the depositor: Provided, however, that 'deposits' shall not include any deposits by associations. For purposes of this Article, determination of deposits shall be made with reference to regulatory reports of condition or similar reports made by or to State and federal regulatory authorities.
- (8) 'Federal association' means an association chartered ~~by the Federal Home Loan Bank Board pursuant to the 'Home Owners' Loan Act of 1933', 12 U.S.C. Section 1464, as amended,~~ under the laws of the United States.
- (9) 'North Carolina association' means an association organized under the laws of the State of North Carolina or under the laws of the United States and that:
 - a. Has its principal place of business in the State of North Carolina;
 - b. Which if controlled by an organization, the organization is either a North Carolina association, Southern Region association, North Carolina savings and loan holding company, or a Southern Region savings and loan holding company; and
 - c. More than eighty percent (80%) of its total deposits, other than deposits located in branch offices acquired

pursuant to Section 123 of the Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m)) or comparable state law, are in its branch offices located in one or more of the Southern Region states.

- (10) 'North Carolina Savings and Loan Holding Company' means a savings and loan holding company that:
 - a. Has its principal place of business in the State of North Carolina;
 - b. Has total deposits of its Southern Region association subsidiaries and North Carolina association subsidiaries that exceed eighty percent (80%) of the total deposits of all association subsidiaries of the savings and loan holding company other than those association subsidiaries held pursuant to Section 123 of the Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m)) or comparable state law.
- (11) 'Principal place of business' of an association means the state in which the aggregate deposits of the association are the largest. For the purposes of this Article, the principal place of business of a savings and loan holding company is the state where the aggregate deposits of the association subsidiaries of the holding company are the largest.
- (12) 'Savings and loan holding company' means any company which directly or indirectly controls an association or controls any other company which is a savings and loan holding company.
- (13) 'Service Corporation' means any corporation, the majority of the capital stock of which is owned by one or more associations and which engages, directly or indirectly, in any activities which may be engaged in by a service corporation in which an association may invest under the laws of one of the states or under the laws of the United States.
- (14) 'Southern Region association' means an association other than a North Carolina association organized under the laws of one of the Southern Region states or under the laws of the United States and that:
 - a. Has its principal place of business only in a Southern Region state other than North Carolina;
 - b. Which if controlled by an organization, the organization is either a Southern Region association or a Southern Region savings and loan holding company; and

- c. More than eighty percent (80%) of its total deposits, other than deposits located in branch offices acquired pursuant to Section 123 of the Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m)) or comparable state law, are in its branch offices located in one or more of the Southern Region states.
- (15) 'Southern Region savings and loan holding company' means a savings and loan holding company that:
 - a. Has its principal place of business in a Southern Region state other than the State of North Carolina;
 - b. Has total deposits of its Southern Region association subsidiaries and North Carolina association subsidiaries that exceed eighty percent (80%) of the total deposits of all association subsidiaries of the savings and loan holding company other than those association subsidiaries held pursuant to Section 123 of the Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m)) or comparable state law.
- (16) 'Southern Region states' means the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.
- (17) 'State' means any state of the United States and the District of Columbia.
- (18) 'State association' means an association organized under the laws of one of the states.
- (19) 'Subsidiary' means that which is set forth in the Federal Savings and Loan Holding Company Act, 12 U.S.C. Section 1730a(a)(1)(H), as amended."

Sec. 4. G.S. 54B-48.3 is amended by adding a new subsection to read:

"(b1) A North Carolina savings and loan holding company or a North Carolina association may acquire any Southern Region association or Southern Region savings and loan holding company with the approval of the Administrator. The North Carolina savings and loan holding company or North Carolina association shall submit to the Administrator an application for approval of the acquisition, which application shall be approved only if the application includes a business plan extending for an initial period of at least three years from the date of the acquisition which shall be renewed thereafter for as long as may be required by the Administrator. The association may not deviate without the prior written approval of the Administrator

from the business plan which shall address such matters as the Administrator may deem appropriate for the protection of the depositors and members of the North Carolina association and the general public. The business plan shall address, without limitation:

- (1) Insurance of depositors' accounts.
- (2) Conversion of corporate form or other fundamental changes.
- (3) Closing, selling, or divesting any or all North Carolina branches."

Sec. 5. G.S. 54B-56(b) reads as rewritten:

"(b) The Administrator shall furnish a copy of the report to the association examined and may, upon request, furnish a copy of or excerpts from the report to the ~~Federal Home Loan Bank Board, a Federal Home Loan Bank, any mutual deposit guaranty association organized and operated under the provisions of Article 12 of this Chapter, or the Federal Savings and Loan Insurance Corporation or its successor,~~ appropriate federal regulatory authorities."

Sec. 6. G.S. 54B-61(b) reads as rewritten:

"(b) In lieu of causing such appraisals to be made, the Administrator may accept an appraisal caused to be made by a ~~Federal Home Loan Bank, the Federal Home Loan Bank Board or by the Federal Savings and Loan Insurance Corporation or any mutual deposit guaranty association organized and operating under the provisions of Article 12 of this Chapter,~~ the appropriate federal regulatory authority."

Sec. 7. G.S. 54B-77(a) reads as rewritten:

"(a) In addition to the powers granted under this Chapter, any savings and loan association incorporated or operated under the provisions of this Chapter is herein authorized to:

- (1) Establish off the premises of any principal office or branch a customer communications terminal, point-of-sale terminal, automated teller machine, automated or other direct or remote information-processing device or machine, whether manned or unmanned, through or by means of which funds or information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise to or from an association terminal or terminals controlled or used by or with other parties; and the establishment and use of such a device or machine shall not be deemed to constitute a branch office and the capital requirements and standards for approval of a branch office as set forth in the statutes and regulations, shall not be applicable to the establishment of any such off-premises terminal, device or machine; and associations may through mutual consent share on-premises unmanned

automated teller machines and cash dispensers. The Administrator may prescribe rules and regulations with regard to the application for permission for use, maintenance and supervision of said terminals, devices and machines;

- (2) Subject to such regulations as the Administrator may prescribe, a state-chartered association is authorized to issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations;
- (3) Subject to such regulations as the Administrator may prescribe, a state-chartered association may act as a trustee, executor, administrator, guardian or in any other fiduciary capacity permitted for federal savings and loan associations ~~by the Congress of the United States, Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation;~~ associations;
- (4) a. In accordance with rules and regulations issued by the Administrator, mutual capital certificates may be issued by state-chartered associations and sold directly to subscribers or through underwriters, and such certificates shall constitute part of the general reserve and net worth of the issuing association. The Administrator, in the rules and regulations relating to the issuance and sale of mutual capital certificates, shall provide that such certificates:
 1. Shall be subordinate to all savings accounts, savings certificates, and debt obligations;
 2. Shall constitute a claim in liquidation on the general reserves, surplus and undivided profits of the association remaining after the payment of all savings accounts, savings certificates, and debt obligations;
 3. Shall be entitled to the payment of dividends; and
 4. May have a fixed or variable dividend rate.
- b. The Administrator shall provide in the rules and regulations for charging losses to the mutual capital certificate, reserves, and other net worth accounts."

Sec. 8. G.S. 54B-109(b) reads as rewritten:

"(b) An association which employs collection agents, who for any reason are not covered by the bond as hereinabove required, shall provide for the bonding of each such agent in an amount equal to at least twice the average monthly collections of such agent. Such agents shall be required to make settlement with the association at least once monthly. No such coverage by bond will be required of any agent which is a bank insured by the Federal Deposit Insurance Corporation or an association insured by the Federal Savings and Loan Insurance

~~Corporation or a mutual deposit guaranty association, federally insured depository institution.~~ The amount and form of such bonds and the sufficiency of the surety thereon shall be approved by the board of directors and the Administrator before such is valid. All such bonds shall provide that a cancellation thereof either by the surety or by the insured shall not become effective unless and until 30 days' notice in writing shall have been given to the Administrator."

Sec. 9. G.S. 54B-121(c) is amended by adding a new subdivision to read:

"(3) An association may establish demand deposit accounts as a class of withdrawable accounts. The association shall not permit any overdraft, including an intraday overdraft, on behalf of an affiliate or incur any overdraft in the association's account at a federal reserve bank or federal home loan bank on behalf of an affiliate."

Sec. 10. G.S. 54B-154 reads as rewritten:

"§ 54B-154. *Insider loans.*

The Administrator ~~shall~~ may promulgate rules and regulations ~~consistent with this section, no less stringent than the requirements of the appropriate federal regulatory authority, and as he deems necessary, to govern the making of loans to officers and directors, and their associates, and companies or other business entities controlled by them.~~

~~Such loans shall be in the ordinary business of the association, which do not involve more than normal risk of collectibility, or pose other unfavorable features. Such loans shall be made only when approved by a majority of the directors, by resolution upon which no director interested in the loan proceeds may vote, and only upon a full disclosure of the transaction to the board. Full disclosure must include whether the loan is made on substantially the same terms, including interest rate and collateral, as those prevailing at the time for comparable loans to other persons. Departure from the terms of loans made to others must be justified and approved as a part of the resolution. The Administrator's rules shall clearly state that no officer, director, or their associates, or companies or other business entities controlled by them, shall enjoy an improper advantage with respect to loan transactions beyond those advantages enjoyed by other loan applicants."~~

Sec. 11. G.S. 54B-194(d) reads as rewritten:

"(d) The permitted activities of a service corporation shall be described in the rules and regulations as promulgated by the Administrator. In addition, a service corporation may engage in those activities which are approved ~~by the Federal Home Loan Bank Board~~ for service corporations owned solely by federal associations who have

their principal offices in this State, unless such activities are prohibited by the Administrator."

Sec. 12. G.S. 54B-195 reads as rewritten:

" § 54B-195. *Any loan or investment permitted for federal associations.*

Subject to such limitations and restrictions as the Administrator may prescribe through rules and regulations, any State association is authorized and permitted to make any loan or investment, or engage in any activity, which may be permitted ~~by the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the United States Congress~~ for federal associations whose principal offices are located within this State. Every loan or investment made by a State association prior to the enactment of this Chapter shall for all purposes be considered to have been permitted loans or investments if federal associations were authorized to make such loans or investments at the time they were made by the State association."

Sec. 13. G.S. 54B-210 reads as rewritten:

" § 54B-210. *Components of liquidity fund.*

(a) Every State association shall establish and maintain a regulatory capital account in an amount and in such funds and investments that comply with the requirements of ~~its federal insurer of withdrawable accounts,~~ the appropriate federal regulatory authorities.

(b) The failure of a State association to maintain the required level and type of regulatory capital may be grounds for supervisory action by the Administrator.

(c) The Administrator may adopt rules to implement this section."

Sec. 14. G.S. 54B-216 reads as rewritten:

" § 54B-216. *General reserve.*

(a) Every State association shall establish and maintain general valuation allowances and specific loss reserves in compliance with the requirements of ~~its federal insurer of withdrawable accounts,~~ the appropriate federal regulatory authorities.

(b) The failure of a State association to maintain the required level of general valuation allowances or specific loss reserves may be grounds for supervisory action by the Administrator.

(c) The Administrator may adopt rules to implement this section."

Sec. 15. G.S. 54B-236 reads as rewritten:

" § 54B-236. *Definitions.*

The term 'institution' as used in this Article shall mean savings and loan associations organized or operated under the provisions of this Chapter, or credit unions organized or operated under the provisions of Articles 14A to 14L of Chapter 54 of the General Statutes, or any institution that is eligible for insurance by ~~the Federal Savings and Loan Insurance Corporation,~~ the Federal Deposit Insurance Corporation or the National Credit Union Administration."

Sec. 16. G.S. 54B-156(b) is amended by deleting "G.S. 24-10(e) and (f)" and substituting "G.S. 24-10.1".

Sec. 17. G.S. 54B-10(a)(8) and (b)(9) are amended by deleting "G.S. 55-26" and substituting "G.S. 55-8-06".

Sec. 18. G.S. 54B-14(c) is amended by deleting "G.S. 55-4" and substituting "G.S. 55-1-20" and is further amended by deleting "in accordance with G.S. 55-4(a)(6)".

Sec. 19. G.S. 54B-20(b) is amended by deleting "G.S. 55-14" and substituting "G.S. 55-5-02".

Sec. 20. G.S. 54B-40 is amended by deleting "subsection (a) of G.S. 55-116" and substituting "G.S. 55-14-01".

Sec. 21. G.S. 54B-261(a1) is amended by deleting "G.S. 55-113" and substituting "Article 13 of Chapter 55 of the General Statutes".

Sec. 22. Sections 1 through 16 of this act are effective upon ratification. Sections 17 through 21 shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 15th day of June, 1990.

H.B. 2060

CHAPTER 807

AN ACT TO EXTEND THE SEASON FOR HUNTING BEAR IN CERTAIN AREAS OF GATES COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The season for hunting black bears during 1990 shall be from the second Monday in November to the following Saturday, both days inclusive, in the following areas of Gates County:

- (1) That portion of Gates County within a line beginning with the intersection of N.C. Highway 32 and the Virginia state line; thence south along N.C. Highway 32 to its intersection with State Road 1002; thence south along State Road 1002 to its intersection with the Perquimans County line; thence east along the Perquimans County line to its intersection with the Pasquotank County line; thence north along the Pasquotank County line to its intersection with the Camden County line; thence northwest along the Camden County line to its intersection with the Virginia state line; thence west along the Virginia state line to the point of origin;
- (2) That portion of Gates County within a line beginning at the intersection of N.C. Highway 13/158 and the Hertford County line; thence northeast along N.C. Highway 13/158 to its intersection with N.C. Highway 137; thence east along

N.C. Highway 137 to its intersection with N.C. Highway 37; thence southeast along N.C. Highway 37 to its intersection with the Chowan County line; thence southwest along the Chowan County line to its intersection with the Hertford County line; thence northwest along the Hertford County line to the point of origin.

Sec. 2. The seasons for hunting black bears in the areas of Gates County described in Section 1 in 1991 and succeeding years shall be for at least six days, as established by the Wildlife Resources Commission.

Sec. 3. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 20th day of June, 1990.

H.B. 2063

CHAPTER 808

AN ACT TO AMEND THE LAW PROTECTING MIGRATORY
WILDFOWL IN CURRITUCK SOUND AND ITS
TRIBUTARIES.

The General Assembly of North Carolina enacts:

Section 1. Subsection (b) of Section 14 of Chapter 1436 of the 1957 Session Laws is amended by deleting the word "bush" and substituting the words "or temporary", and by inserting the words "or be hunting in the presence of the licensee" between the word "blind" and the period.

Sec. 2. Subsection (c) of Section 14 of Chapter 1436 of the 1957 Session Laws is amended by deleting that subsection and substituting the following:

"(c) An owner of real estate who has a licensed point blind on his real estate, or the guests of such an owner, may hunt at one unlicensed temporary location per licensed blind on the real estate, provided that the licensed location is not being hunted at the same time and that the temporary location is not within 500 yards of a licensed location belonging to someone other than the owner of the real estate."

Sec. 3. Section 17 of Chapter 1436 of the 1957 Session Laws is repealed.

Sec. 4. Section 22 of Chapter 1436 of the 1957 Session Laws is repealed.

Sec. 5. Section 24 of Chapter 1436 of the 1957 Session Laws is amended by deleting that section and substituting the following:

"Sec. 24. The starting time for waterfowl hunting each day, and the quitting time for waterfowl hunting each day prior to November 1

of the hunting season, shall be as set by the North Carolina Wildlife Resources Commission, or as required by the statewide game law. The quitting time for waterfowl hunting each day after November 1 of the hunting season shall be 4:20 p.m. Eastern Standard Time."

Sec. 6. Section 34 of Chapter 1436 of the 1957 Session Laws is repealed.

Sec. 7. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 20th day of June, 1990.

H.B. 2124

CHAPTER 809

AN ACT TO MAKE A TECHNICAL CORRECTION IN A 1987 ACT WHICH REGULATED THE SHINING OF LIGHTS IN DEER AREAS IN THE COUNTIES OF BERTIE AND MADISON.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 249, Session Laws of 1987, reads as rewritten:

"Sec. 3. ~~Section 1~~ Sections 1 and 2 of this act shall not be construed to prevent:

- (1) the lawful hunting of raccoon or opossum during open season with artificial lights designed or commonly used in taking raccoon and opossum at night;
- (2) the necessary shining of lights by landholders on their own lands;
- (3) the shining of lights necessary to normal travel by motor vehicles on roads or highways; or
- (4) the use of lights by campers and others who are legitimately in these areas for other reasons and who are not attempting to attract or to immobilize deer by the use of lights."

Sec. 2. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 20th day of June, 1990.

H.B. 2131

CHAPTER 810

AN ACT TO PROHIBIT THE DISCHARGE OF A FIREARM FROM CERTAIN ROADS IN MARTIN COUNTY AND TO REGULATE THE DISCHARGE OF A RIFLE OF GREATER THAN .22 CALIBERS IN MARTIN COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to discharge a firearm on, from, or across the right-of-way of any public paved road, S.R. 1500, S.R. 1103, or S.R. 1554.

Sec. 2. It is unlawful to discharge a rifle of greater than .22 calibers, except from an elevated position in which the rifle is a minimum of eight feet above ground level.

Sec. 3. Violation of this act constitutes a misdemeanor punishable for a first conviction by a fine of not less than fifty dollars (\$50.00) nor more than seventy-five dollars (\$75.00), and punishable for a second or subsequent conviction by a fine of up to five hundred dollars (\$500.00), or by imprisonment not to exceed six months, or both, in the discretion of the court.

Sec. 4. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

Sec. 5. This act applies only to Martin County.

Sec. 6. This act shall become effective October 1, 1990, and shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1990.

H.B. 2159

CHAPTER 811

AN ACT TO ADD MITCHELL COUNTY TO THE AREAS COVERED BY THE STATEWIDE FOX MANAGEMENT PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-291.4A(a) reads as rewritten:

"(a) There is an open season for the taking of foxes with firearms in all areas of the State east of Interstate Highway 77 and in Mitchell County from the beginning of the season established by the Wildlife Resources Commission for the taking of rabbits and quail through January 1 of each year. The selling, buying, or possessing for sale of any fox or fox part taken pursuant to this subsection is prohibited, and is punishable as provided by G.S. 113-294(a) or (k)."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1990.

H.B. 2199

CHAPTER 812

AN ACT TO PROHIBIT THE DISCHARGE OF FIREARMS ON OR ACROSS ANY HIGHWAY IN WATAUGA COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 13 of the 1977 Session Laws reads as rewritten:

"Section 1. It shall be unlawful for any person to hunt, take or kill any species of wild animal or wild bird by the use of any loaded firearm or other lethal weapon from the roadway or right-of-way of any State-maintained road or highway, or to discharge a firearm or other lethal weapon across any such road or highway in Ashe ~~County~~, and Watauga Counties."

Sec. 2. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 20th day of June, 1990.

H.B. 2377

CHAPTER 813

AN ACT TO REQUIRE UTILITIES TO PAY CERTAIN TAXES IN FISCAL YEAR 1989-90 THAT WOULD OTHERWISE BE PAYABLE IN FISCAL YEAR 1990-91 AND TO CHANGE THE ACCOUNTING METHOD THAT APPLIES TO REVENUE DISTRIBUTED TO LOCAL GOVERNMENTS FROM CERTAIN TAXES LEVIED BY THE STATE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 105-164.16(c), a utility that has an accrued sales tax liability for the months of April and May, 1990 of at least two thousand dollars (\$2,000) and would otherwise remit the accrued taxes within 30 days after June 30, 1990, shall remit the sales taxes that accrued during April and May to the Secretary of Revenue by June 25, 1990. Sales taxes that accrue in June 1990 are payable to the Secretary of Revenue by July 30, 1990. When remitting these taxes, a municipality may deduct the amount allowable under G.S. 105-164.21A for the period for which taxes are remitted.

Sec. 2. Notwithstanding G.S. 105-116 and 105-120, an electric power company, a gas company, or a telephone company that has an accrued franchise tax liability for the months of April and May, 1990 of at least two thousand dollars (\$2,000) and would otherwise remit the accrued taxes within 30 days after July 1, 1990, shall remit the gross receipts taxes that accrued during April and May to the Secretary of Revenue by June 25, 1990. Gross receipts taxes that accrue in June 1990 are payable to the Secretary of Revenue by July 30, 1990.

Sec. 3. G.S. 105-116 reads as rewritten:

~~" § 105-116. Franchise or privilege tax on electric light, power, gas, water, sewerage, and other similar public service companies not otherwise taxed, power, natural gas, water, and sewerage companies.~~

~~(a) Every person, firm or corporation, domestic or foreign, other than municipal corporations, engaged in the business of furnishing electricity, electric lights, current, power or piped gas, or owning and/or operating a water system subject to regulation by the North Carolina Utilities Commission, or owning and/or operating a public sewerage system shall, within 30 days after the first day of January, April, July and October of each year, make and deliver to the Secretary of Revenue, upon such forms and blanks as required by him, a report verified by the affirmation of the officer or authorized agent making such report and statement, containing the following information:~~

- ~~(1) The total gross receipts for the three months ending the last day of the month immediately preceding such return from such business within and without this State.~~
- ~~(2) The total gross receipts for the same period from such business within this State.~~
- ~~(3) The total gross receipts from the commodities or services described in this section sold to a vendee subject to the tax levied by this section or to a joint agency established under Chapter 159B of the General Statutes or a municipality having an ownership share in a project established under that Chapter.~~
- ~~(4) The total amount and price paid for such commodities or services purchased from others engaged in the above-named business in this State, and the name or names of the vendor.~~
- ~~(5) As to gas companies, the gross receipts derived from sales of piped gas to manufacturers which is to be used as an ingredient or component of a manufactured product.~~

~~Gross receipts shall be reported on an accrual basis.~~

~~(b) From the total gross receipts within this State there shall be deducted the gross receipts reported in subsection (a)(3) of this section.~~

~~(c) An annual franchise or privilege tax at the rates specified in this subsection is levied on the businesses listed in subsection (a). This tax is for the privilege of engaging in business in this State and is due and payable quarterly to the Secretary of Revenue when the report required by subsection (a) is filed. The tax on a public sewerage company is at the rate of six percent (6%) of the total gross receipts of the company derived within the State. The tax on an electric power company or a gas company is at the rate of three and twenty-two hundredths percent (3.22%) of the total gross receipts derived within~~

~~the State. The tax on water companies is at the rate of four percent (4%) of the total gross receipts derived within the State. All deductions allowed by this section shall first be subtracted from total gross receipts to determine the total taxable gross receipts.~~

~~The tax imposed by this section does not apply to special charges collected within this State by natural gas utilities pursuant to drilling and exploration surcharges approved by the Utilities Commission, where such surcharges are segregated from the other receipts of the natural gas utility and are devoted to drilling, exploration and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and where the beneficial interest in said surcharge collections is preserved for the natural gas customers paying said surcharges under rules established by the Utilities Commission.~~

~~In determining the total tax payable by any company under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter.~~

~~(d) Repealed by Session Laws 1973, c. 1287, s. 3.~~

~~(e) The report herein required of gross receipts within and without the State, shall include the total gross receipts for the period stated of all properties owned and operated by the reporting person, firm, or corporation on the first day of each calendar quarter year, whether operated by it for the previous annual period, or whether immediately acquired by purchase or lease, it being the intent and purpose of this section to measure the amount of privilege or franchise tax in each calendar quarter year with reference to the gross receipts of the property operated for the previous calendar quarter year and to fix liability for the payment of the tax on the owner, operator, or lessor on the first day of January, April, July and October of each year.~~

~~(f) Companies taxed under this section shall not be required to pay the franchise tax imposed by G.S. 105-122 or G.S. 105-123 unless the tax levied by G.S. 105-122 or G.S. 105-123 exceeds the tax levied in this section, and no county shall impose a franchise, license or privilege tax upon the business taxed under this section.~~

~~(g) The Secretary of Revenue shall determine the total gross receipts derived from the sale within each municipality of the commodities or services described in this section, except water and sewerage services, and shall distribute to each municipality an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from sales within the municipality. In determining the amount to be distributed to a municipality pursuant to this subsection, gross receipts from sales within a municipality do not include receipts from sales of~~

~~pip~~ed gas to a manufacturer for use as an ingredient or component part of a manufactured product.

~~As soon as practicable after the date on which each quarterly payment of taxes is due under this section, the Secretary of Revenue shall certify to the State Disbursing Officer and to the State Treasurer the amount distributable to each municipality under this section. The State Disbursing Officer shall thereupon issue a warrant on the State Treasurer to each municipality in the amount so certified.~~

~~So long as there is a distribution to municipalities of the amount herein provided from the tax imposed by this section, no municipality shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment.~~

~~(h) For purposes of subsection (g) and of G.S. 105-120(d), the term "municipality" includes any urban service district defined by the governing board of a consolidated city-county, and the amounts due thereby shall be distributed to the government of the consolidated city-county.~~

~~(a) Tax. An annual franchise or privilege tax is imposed on a person, firm, or corporation, other than a municipal corporation, that is:~~

- ~~(1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.~~
- ~~(2) A natural gas company engaged in the business of furnishing piped natural gas.~~
- ~~(3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.~~
- ~~(4) A public sewerage company engaged in owning or operating a public sewerage system.~~

~~The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. The tax on a natural gas company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing piped natural gas. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the~~

North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Payment. The tax imposed by this section is payable when a report is required to be filed. A company taxed under this section shall file a report on a quarterly basis. A quarterly report covers a calendar quarter and is due within 30 days after the end of the quarter covered by the report. A company shall submit a report on a form provided by the Secretary. The report shall include the company's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

- (1) The company's gross receipts for the reporting period from business inside and outside this State, stated separately.
- (2) The company's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under G.S. Chapter 159B or a municipality having an ownership share in a project established under that Chapter.
- (3) The amount of and price paid by the company for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.
- (4) For an electric power company or a natural gas company, the company's gross receipts from the sale within each municipality of the commodities and services described in subsection (a).

A company shall report its gross receipts on an accrual basis.

(c) Gas Surcharges. Gross receipts of a natural gas company do not include special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the

natural gas customers paying the surcharges under rules established by the Commission.

(d) Appropriation. There is annually appropriated from the General Fund to each municipality an amount that equals three and nine hundredths percent (3.09%) of the taxable gross receipts derived, from April 1 of the preceding fiscal year to the following March 31, by an electric power company and a natural gas company from sales within the municipality of the commodities and services described in subsection (a). The Secretary of Revenue shall transfer the amount appropriated to a municipality in quarterly installments on or before September 15, December 15, March 15, and June 15 based on the taxable gross receipts derived within the municipality during the preceding calendar quarter. If a company's report does not state the company's taxable gross receipts derived within a municipality, the Secretary of Revenue shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality. Before transferring the amount appropriated by this subsection, the Secretary of Revenue shall certify the amount to be transferred to the State Controller. The appropriation made by this subsection shall be included in the Current Operations Appropriations Act.

As used in this subsection, the term 'municipality' includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county.

(e) Local Tax. A municipality that imposed a license, franchise, or privilege tax on or before January 1, 1947, on a company taxed under this section may continue to impose the tax in an amount that does not exceed the amount imposed as of that date. Other municipalities and counties may not impose a license, franchise, or privilege tax on a company taxed under this section."

Sec. 4. G.S. 105-120 reads as rewritten:

"§ 105-120. Franchise or privilege tax on telephone companies.

(a) Tax. An annual franchise or privilege tax is imposed on a ~~Every~~ person, firm, or corporation, ~~domestic or foreign, owning and/or operating~~ that owns or operates a business entity for the provision of local telecommunications service. The tax is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts. A company's taxable gross receipts are its receipts from providing local telecommunications service, including receipts from rentals and other similar charges, less its receipts from telecommunications access charges. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter. ~~service, shall within 30 days after the first day of January,~~

~~April, July and October of each year, make and deliver to the Secretary of Revenue a quarterly return, verified by the affirmation of the officer or authorized agent making such return, showing the total amount of gross receipts of such business entity for the three months ending the last day of the month immediately preceding such return, and pay, at the time of making such return, the franchise, license or privilege tax herein imposed. Gross receipts shall be reported on an accrual basis.~~

(b) Payment. The tax imposed by this section is payable when a report is required to be filed. A company taxed under this section shall file a report on a quarterly basis. A quarterly report covers a calendar quarter and is due within 30 days after the end of the quarter covered by the report. A company shall submit a report on a form provided by the Secretary. The report shall state the company's gross receipts for the reporting period from providing local telecommunications service and from providing local telecommunications service within each municipality served. A company shall report its gross receipts on an accrual basis.

(c) Appropriation. There is annually appropriated from the General Fund to each municipality an amount that equals three and nine hundredths percent (3.09%) of the taxable gross receipts derived, from April 1 of the preceding fiscal year to the following March 31, from local telecommunications service provided within the municipality. The Secretary of Revenue shall transfer the amount appropriated to a municipality in quarterly installments on or before September 15, December 15, March 15, and June 15 based on the taxable gross receipts derived within the municipality during the preceding calendar quarter. If a company's report does not state the company's taxable gross receipts derived within a municipality, the Secretary of Revenue shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality. Before transferring the amount appropriated by this subsection, the Secretary of Revenue shall certify the amount to be transferred to the State Controller. The appropriation made by this subsection shall be included in the Current Operations Appropriations Act.

As used in this subsection, the term 'municipality' includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county.

(d) No Local Tax. Counties and cities may not impose a license, franchise, or privilege tax on a company taxed under this section or under G.S. 105-164.4(a)(4c).

(e) Definitions. For purposes of this section:

- (1) 'Local telecommunications service' means telecommunications service provided wholly within a LATA entitling the user to access to a local telephone exchange for the privilege of telephonic quality communication with substantially all persons in the local telephone exchange. Provided, however, local telecommunications service does not include intraLATA or interLATA toll telecommunications ~~services, — service,~~ or private telecommunications ~~services; service.~~
- (2) 'LATA' is a Local Access and Transport Area representing a geographical area comprising one or more telephone exchange ~~areas; areas.~~
- (3) 'InterLATA telecommunications' is telecommunications service provided between two or more ~~LATAs; LATAs.~~
- (4) 'Toll telecommunications service' means:
 - a. A telephonic quality communication for which:
 1. There is a toll charge ~~which that~~ varies in amount with the distance and elapsed transmission time of each individual communication; and
 2. The charge is paid within the United ~~States; and States.~~
 - b. A ~~service which~~ that entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area ~~which that~~ is outside the local telephone ~~exchange; exchange.~~
- (5) 'Private telecommunications service' means a service furnished to a subscriber that entitles the subscriber to exclusive or priority use of a communications channel or group of channels.
- (6) 'Telecommunications access charges' means charges paid to a provider of local telecommunications service for access to an interconnection with the local telephone exchange.

~~(b) An annual franchise or privilege tax of three and twenty-two hundredths percent (3.22%), payable quarterly, on the gross receipts of such business entity, is herein imposed for the privilege of engaging in such business within this State. Provided, however, gross receipts from local telephone service shall not include telecommunications access charges. Such gross receipts shall include all rentals and other similar charges. Telecommunications access~~

charges are those charges paid to a provider of local telephone service for access to an interconnection with the local telephone exchange.

~~(c) Repealed by Session Laws 1973, c. 1287, s. 3.~~

~~(d) The Secretary of Revenue shall ascertain the total gross receipts derived from local business conducted within each municipality in this State by persons, firms or corporations taxed under this section, and out of the tax levied by this section, an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from local business conducted within any municipality shall be distributed to such municipality. When a person, firm or corporation taxed under this section properly receives a credit on said taxes under the proviso in subsection (b) because of payments made to a municipality, such municipality's distributive share of the taxes levied by this section shall be reduced by the amount of the credit properly received by said person, firm or corporation. If the credit received under the proviso is greater than the municipality's distributive share of the taxes levied under this section, no distribution to such municipality shall be made.~~

~~As soon as practicable after the date on which each quarterly payment of taxes is due under this section, the Secretary of Revenue shall certify to the State Disbursing Officer and to the State Treasurer the amount distributable to each municipality under this section. The State Disbursing Officer shall thereupon issue a warrant on the State Treasurer to each municipality in the amount so certified.~~

~~In determining what constitutes local business conducted within a municipality for the purposes of this subsection, all business originating within a municipality, except long-distance calls, shall be construed as local business.~~

~~The Department of Revenue is hereby authorized and empowered to require any and all persons, firms or corporations taxed under this section to file additional reports disclosing the gross receipts derived from local business as herein defined and the gross receipts from long-distance business.~~

~~If the records of the corporation taxed under this section do not readily disclose allocation to municipalities of revenues from local business as above defined, the Secretary of Revenue shall prescribe some practicable method of allocating such local revenues.~~

~~(e) Nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce.~~

~~(f) Counties, cities and towns shall not levy any franchise, license, or privilege tax on the business taxed under this section or under G.S. 105-164.4(4c)."~~

Sec. 5. G.S. 105-113.82 reads as rewritten:

"§ 105-113.82. Distribution Appropriation of amount equal to part of beer and wine taxes.

(a) Amount, Method. -- ~~The Secretary shall annually distribute the following percentages of~~ An amount equal to the following percentages of the net amount of excise taxes collected collected, during the period that begins the preceding October 1 and ends September 30, on the sale of malt beverages and wine, less the amount of the net proceeds distributed- credited to the Department of Agriculture under G.S. 105-113.81A, is annually appropriated from the General Fund to the counties and cities in which the retail sale of these beverages is authorized:

- (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23 3/4%);
- (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and
- (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount ~~of excise tax to be distributed,~~ appropriated, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount ~~of excise tax to be distributed,~~ appropriated, that portion to be determined on the basis of population. ~~The amounts~~ amount of the appropriation to be distributed under subdivisions (1), (2), and (3) shall be computed separately.

(b) Reduction in ~~Amount Distributed.~~ Appropriation. -- Where the sale of malt beverages, unfortified wine, or fortified wine is prohibited in a defined area of a city or county in which the sale of the beverage is authorized, the amount that would otherwise distributable- be appropriated to the city or county on the basis of population under subsection (a) shall be reduced in the same ratio that the area of the defined area bears to the total area of the city or county, unless the defined area is a city. If the defined area in a county is a city, the reduction in the amount that would otherwise distributable- be appropriated to the county under subsection (a) shall be based on population instead of area. ~~All reductions shall be retained by the State.~~

(c) Exception. -- Notwithstanding subsection (a), in a county in which ABC stores have been established by petition, ~~revenue the amount appropriated~~ shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. -- ~~The distribution appropriation shall be made distributed to cities and counties within 60 days after September 30 of each year and shall be based on collections during the preceding 12-month period ending September 30, year.~~

(e) Population Estimates. -- To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.

(f) City Defined. -- As used in this section, the term 'city' means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city-county.

(g) Use of Funds. -- Funds ~~distributed~~ appropriated to a county or city under this section may be used for any public purpose.

(h) Act. -- The appropriation made by this section shall be included in the Current Operations Appropriations Act."

Sec. 6. G.S. 105-198 reads as rewritten:

"§ 105-198. Intangible personal property.

~~The intangible personal properties enumerated and defined in this Article or schedule are hereby classified under authority of Section 2(2), Article V of the Constitution, and the taxes levied thereon are for the benefit of the State for distribution to political subdivisions of the State as hereinafter provided. North Carolina Constitution. The taxes are levied for the purposes stated in this Article. Banks or banking associations, trust companies or any combination of such facilities or services shall be subject to the provisions of this Article for taxable years beginning on and after January 1, 1974."~~

Sec. 7. G.S. 105-213 reads as rewritten:

"§ 105-213. ~~Separate records by counties; disposition and distribution of taxes collected; purpose of tax.~~ Appropriation to counties and municipalities; use of appropriation.

(a) There is annually appropriated from the General Fund to counties and municipalities the amount of revenue collected under this Article during the preceding fiscal year, plus an amount equal to forty percent (40%) of the tax collected on accounts receivable during the preceding fiscal year and less an amount equal to the costs during the preceding fiscal year of:

- (1) Refunds made during the fiscal year of taxes levied under this Article.
- (2) The Department of Revenue to collect and administer the taxes levied under this Article.
- (3) The Department of Revenue in performing the duties imposed by Article 15 of this Chapter.
- (4) The Property Tax Commission.

- (5) The Institute of Government in operating a training program in property tax appraisal and assessment.

The appropriation shall be distributed by August 30 of each year. The appropriation shall be included in the Current Operations Appropriations Act.

To distribute the appropriation, The the Secretary of Revenue shall keep a separate record by counties of the taxes collected under the provisions of this Article and shall, as soon as practicable after the close of each fiscal year, shall certify to the State Disbursing Officer Controller and to the State Treasurer the amount of such taxes to be distributed to each county and municipality in the State. The State Disbursing Officer Controller shall thereupon then issue a warrant on the State Treasurer to each county and municipality in the amount so certified.

In determining the amount to be distributed, the Secretary shall deduct from the net amount of taxes collected under this Article, which is the total amount collected less refunds, the cost to the State for the preceding fiscal year to:

- (1) Collect and administer the taxes levied under this Article;
- (2) Perform the duties imposed upon the Department of Revenue by Article 15 of this Chapter;
- (3) Operate the Property Tax Commission; and
- (4) Operate a training program in property tax appraisal and assessment administration by the Institute of Government.

The Secretary shall allocate the net amount of taxes collected under this Article, less the deductions enumerated above, amount appropriated under this Article to the counties according to the county in which the taxes were collected. The Secretary shall then increase the amount allocable to each county by a sum equal to forty percent (40%) of the amount of tax on accounts receivable allocated to the county on the basis of collections. The amounts so allocated to each county shall in turn be divided between the county and all municipalities therein the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding such the distribution. For the purpose of computing the distribution of the intangibles tax to any county and the municipalities located therein in the county for any year with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and municipalities therein, the Department shall use the last property valuation of such public service company which has been so certified

in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein.

~~It shall be the duty of the~~ The chairman of the each board of county commissioners of each county and the mayor of each municipality therein to shall report to the Secretary of Revenue such information as he may request for his guidance in making said allotments, requested by the Secretary to enable the Secretary to distribute the amount appropriated by this section. In the event any county or municipality fails to make such report within the time prescribed, the Secretary of Revenue may disregard such defaulting unit in making said allotments. If a county or municipality fails to make a requested report within the time allowed, the Secretary may disregard the county or municipality in distributing the amount appropriated by this section. The amounts so allocated amount distributed to each county and municipality shall be distributed and used by said the county or municipality in proportion to other property tax levies made by it for the various funds and activities of the taxing unit receiving said allotment; provided, however, that a county or municipality may, without regard to any such requirement as to proportionality, use amounts so allocated and amounts allocated under G.S. 105-213.1 and distributed to the county or municipality to secure its obligation under a loan agreement entered into pursuant to the North Carolina Solid Waste Management Loan Program, Chapter 1591 of the General Statutes, county or municipality, unless the county or municipality has pledged the amount to be distributed to it under this section in payment of a loan agreement with the North Carolina Solid Waste Management Capital Projects Financing Agency. A county or municipality that has pledged amounts distributed under this section in payment of a loan agreement with the Agency may apply the amount the loan agreement requires.

(b) For purposes of this section, the term 'municipality' includes any urban service district defined by the governing board of a consolidated city-county, and the amounts due thereby shall be distributed to the government of the consolidated city-county."

Sec. 8. G.S. 105-213.1 reads as rewritten:

"§ 105-213.1. ~~Additional distribution~~ appropriation to counties and municipalities.

(a) ~~Distribution.~~ Appropriation. -- As soon as practicable after July 1 of 1986, the Secretary of Revenue shall allocate for distribution to each county and the municipalities located in the county the amount allocated to that county from taxes levied under G.S. 105-199, 105-200, and 105-205 for the last taxable year in which these taxes were levied, plus or minus a sum that equals the product of this amount and the percentage by which State disposable personal income has increased or decreased during the most recent 12-month period

for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

~~Thereafter, as soon as practicable after July 1 of each year, by August 30 of each year, the Secretary shall allocate to each county the amount of funds allocated to the county under this section the preceding year, plus or minus a sum that equals the product of this amount and the percentage by which State disposable personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.~~

Amounts allocated to a county under this section shall in turn be divided and distributed between the county and the municipalities located in the county in accordance with the method of allocating intangible tax revenue between a county and the municipalities located in the county provided in G.S. 105-213.

(b) Restrictions on Use. -- Amounts distributed to a county or a municipality under this section are subject to the same restrictions as amounts distributed under G.S. 105-213.

(c) Municipality Defined. -- As used in this section, the term 'municipality' has the same meaning as in G.S. 105-213.

(d) Source. Funds distributed under this section shall be drawn from the Local Government Tax Reimbursement Reserve."

Sec. 9. On the effective date of this act, excise taxes on beer and wine levied by G.S. 105-113.80, gross receipts taxes on utility companies levied by G.S. 105-116 and G.S. 105-120, and taxes on intangible personal property levied by Article 7 of Chapter 105 will no longer be reserved for distribution to local governments. Instead, the taxes will become part of the General Fund and will be available for appropriation. Amounts reserved for distribution to local governments under G.S. 105-116, 105-120, 105-113.82, and 105-213 on the effective date of this act shall revert to the General Fund.

Sec. 10. G.S. 147-69.1(c)(6) and G.S. 147-69.1(f) are repealed.

Sec. 11. G.S. 147-69.2(b) is amended by adding the following subdivisions to read:

- "(9) Obligations and securities of the North Carolina Enterprise Corporation, not to exceed twenty million dollars (\$20,000,000) from all funds.
- (10) A limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout transactions, not to exceed thirty million dollars (\$30,000,000) from all funds."

Sec. 12. The amount invested from the General Fund and the Highway Fund pursuant to G.S. 147-69.1(c)(6) and G.S. 147-69.1(f) before their repeal shall be considered an investment from the funds listed in G.S. 147-69.2(a). An amount equal to the investment made from the General Fund under G.S. 147-69.1(c)(6) and 147-69.1(f) shall be transferred to the General Fund from the funds listed in G.S. 147-69.2(a) and an amount equal to the investment made from the Highway Fund under the same statutes shall be transferred to the Highway Fund from the funds listed in G.S. 147-69.2(a).

Sec. 13. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means an electric power company, a gas company, or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, ~~toll~~ toll, or private telecommunications service as defined by G.S. 105-120(a) 105-120(e) or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Sec. 14. G.S. 105-164.4(a)(4a) reads as rewritten:

"(4a) At the rate of three percent (3%) of the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. ~~105-120(a)~~ 105-120(e). A person who operates a utility is considered a retailer under this Article."

Sec. 15. G.S. 105-164.4(a)(4c) reads as rewritten:

"(4c) At the rate of six and one-half percent (6 1/2%) of the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. ~~105-120(a)~~ 105-120(e) that both originate from and terminate in the State ~~which~~ and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides the service outlined above is considered a retailer under this Article. This subdivision ~~shall~~ does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes."

Sec. 16. The General Assembly recognizes that the distributions to local governments from gross receipts franchise taxes, beer and wine taxes, and intangible taxes are a traditional revenue source for local governments. The General Assembly therefore intends that the appropriations under G.S. 105-113.82, 105-116, 105-120, and 105-213 be continuing appropriations.

Sec. 17. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1990.

S.B. 1361

CHAPTER 814**AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-33(d) reads as rewritten:

"(d) The State license issued under G.S. 105-41, 105-42, 105-45, 105-53, 105-54, 105-55, ~~105-57~~, 105-58, and 105-91 shall be and constitute a personal privilege to conduct the profession or business named in the State license, shall not be transferable to any other person, firm or corporation and shall be construed to limit the person, firm or corporation named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article or schedule. Other license issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at such location for the balance of the tax year: Provided, that if the holder of a license under this schedule moves the business for which a license has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars (\$5.00) for each license certificate reissued."

Sec. 2. G.S. 105-38(h) reads as rewritten:

"(h) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one half of the license tax levied by the State, but shall not levy a parade tax or a tax under ~~subsection (h)~~ ~~[subsection (g)]~~ subsection (g) of this section."

Sec. 3. G.S. 105-53(i) reads as rewritten:

"(i) Display and Possession of Licenses and Identification. -- An itinerant merchant shall keep both the license required by this section and the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler shall have the license required by this section and the retail sales tax license with him at all times he offers goods for sale and must produce them upon the request of any

customer, State ~~and/or~~ or local revenue agent, or law enforcement agent. A specialty market vendor shall keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator shall have the license required by this section available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State ~~and/or~~ or local revenue agent, or law enforcement agent.

Upon the request of any customer, State ~~and/or~~ or local revenue agent, or law enforcement agent, a peddler, itinerant merchant, specialty market operator, or specialty market vendor shall provide its name and permanent address. If the peddler, itinerant merchant, specialty market operator, or specialty market vendor is not a corporation, he shall, upon the request of any customer, State ~~and/or~~ or local revenue agent, or law enforcement agent, provide a valid driver's license, a special identification card issued under G.S. 20-37.7, military identification, or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, specialty market operator, or specialty market vendor. If the peddler, itinerant merchant, specialty market operator, or specialty market vendor is a corporation, it shall, upon the request of any customer, State ~~and/or~~ or local revenue agent, or law enforcement agent, give the name and registered agent of the corporation and the address of the registered office of the corporation, as filed with the North Carolina Secretary of State."

Sec. 4. G.S. 105-90.1 is repealed.

Sec. 5. G.S. 105-109.1 reads as rewritten:

"§ 105-109.1. *Interest.*

With respect to the taxes on gross receipts levied in G.S. 105-37.1(a), ~~105-38(7)~~, ~~105-39(c)~~ 105-38(f), and 105-65.1(b)(2), and the tax on installment paper dealers levied in G.S. 105-83(b), all such taxes, including assessments of taxes or additional taxes, shall bear interest from the time such taxes were due to have been paid until paid, at rates established pursuant to G.S. 105-241.1(i)."

Sec. 6. G.S. 105-113.110 reads as rewritten:

"§ 105-113.110. *Violations of Article a felony.*

(a) A dealer who ~~violates this Article~~ possesses marijuana or any other controlled substance or counterfeit controlled substance upon which the tax due under this Article has not been paid, as evidenced by a stamp, is guilty of a Class I felony, and is subject to an additional penalty of one hundred percent (100%) of any tax due from the dealer, felony.

(b) Notwithstanding any other provision of law, no prosecution for a violation of this Article shall be barred before the expiration of six years after the date of the violation."

Sec. 7. Article 2D of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-113.110A. Interest and penalty.

The tax due under this Article shall bear interest at the rate established pursuant to G.S. 105-241.1(i) from the date due until paid. In addition, a dealer who neglects, fails, or refuses to pay the tax due under this Article is liable for a penalty equal to one hundred percent (100%) of the tax."

Sec. 8. G.S. 114-18.1(a) reads as rewritten:

"(a) Every local law enforcement agency and every State law enforcement agency shall, within 48 hours after making an arrest of an individual in possession of a ~~controlled substance or a counterfeit controlled substance~~, more than 42.5 grams of marijuana, seven or more grams of any other controlled substance or counterfeit controlled substance that is sold by weight, or 10 or more dosage units of any other controlled substance or counterfeit controlled substance that is not sold by weight, upon which a North Carolina controlled substance tax stamp is not affixed, report the arrest to the State Bureau of Investigation. Every local law enforcement agency and every State law enforcement agency shall, within 48 hours after seizing any of the above specified quantities of a non-tax-paid controlled substance or a counterfeit controlled substance, report the seizure to the State Bureau of Investigation. The ~~report~~ report, to be in the form prescribed by the Secretary of Revenue, shall include the time and place of the arrest or seizure, the ~~amount and location~~ amount, location, and kind of the substance, and the ~~identification~~ identification, including the social security number, of any individual in possession of the ~~substance~~ substance, and any other information prescribed by the Secretary of Revenue."

Sec. 9. G.S. 114-19(b) reads as rewritten:

"(b) The State Bureau of Investigation shall, on a daily basis, notify the Department of Revenue of all reports it receives pursuant to G.S. 114-18.1 of arrests and seizures involving non-tax-paid controlled substances and counterfeit controlled substances. The Bureau shall also, as soon as practicable, provide the Department with any additional information it receives regarding such arrests and seizures."

Sec. 10. G.S. 105-116(g) reads as rewritten:

"(g) The Secretary of Revenue shall determine the total gross receipts derived from the sale within each municipality of the commodities or services described in this section, except water and

sewerage services, and shall distribute to each municipality an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from sales within the municipality. ~~In determining the amount to be distributed to a municipality pursuant to this subsection, gross receipts from sales within a municipality do not include receipts from sales of piped gas to a manufacturer for use as an ingredient or component part of a manufactured product.~~

As soon as practicable after the date on which each quarterly payment of taxes is due under this section, the Secretary of Revenue shall certify to the State Disbursing Officer and to the State Treasurer the amount distributable to each municipality under this section. The State Disbursing Officer shall thereupon issue a warrant on the State Treasurer to each municipality in the amount so certified.

So long as there is a distribution to municipalities of the amount herein provided from the tax imposed by this section, no municipality shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment."

Sec. 11. G.S. 105-120(d) reads as rewritten:

"(d) The Secretary of Revenue shall ascertain the total gross receipts derived from local business conducted within each municipality in this State by persons, firms or corporations taxed under this section, and out of the tax levied by this section, an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from local business conducted within any municipality shall be distributed to such municipality. ~~When a person, firm or corporation taxed under this section properly receives a credit on said taxes under the proviso in subsection (b) because of payments made to a municipality, such municipality's distributive share of the taxes levied by this section shall be reduced by the amount of the credit properly received by said person, firm or corporation. If the credit received under the proviso is greater than the municipality's distributive share of the taxes levied under this section, no distribution to such municipality shall be made.~~

As soon as practicable after the date on which each quarterly payment of taxes is due under this section, the Secretary of Revenue shall certify to the State Disbursing Officer and to the State Treasurer the amount distributable to each municipality under this section. The

State Disbursing Officer shall thereupon issue a warrant on the State Treasurer to each municipality in the amount so certified.

In determining what constitutes local business conducted within a municipality for the purposes of this subsection, all business originating within a municipality, except long-distance calls, shall be construed as local business.

The Department of Revenue is hereby authorized and empowered to require any and all persons, firms or corporations taxed under this section to file additional reports disclosing the gross receipts derived from local business as herein defined and the gross receipts from long-distance business.

If the records of the corporation taxed under this section do not readily disclose allocation to municipalities of revenues from local business as above defined, the Secretary of Revenue shall prescribe some practicable method of allocating such local revenues."

Sec. 12. G.S. 105-130.7(1) reads as rewritten:

"(1) As soon as may be practicable after ~~the close~~ September 30 of each ~~calendar~~ year, the Secretary of Revenue shall determine from ~~each~~ the corporate income tax return filed ~~with him~~ during such year, ~~and due from the filing corporation~~ the year ending September 30 by each corporation required to file a return during such year, that period the proportion of the entire net income or loss of the corporation allocable to this State under the provisions of G.S. 105-130.4, except as provided ~~herein; if~~ herein. If a corporation has a net income in North Carolina and a net loss from all sources wherever located, or if a corporation has a net loss in North Carolina and a net income from all sources wherever located, the Secretary shall require the use of the allocation fraction determined under the provisions of G.S. 105-130.4. A corporation which is a stockholder in any such corporation shall be allowed to deduct the same proportion of the dividends received by it from such corporation during its income year ending ~~at on or after the end of such calendar year, September 30.~~ No deduction shall be allowed for any part of any dividend received ~~by such corporation~~ from any corporation ~~which filed no that was required to file an income tax return with the Secretary of Revenue during such calendar year,~~ the year ending September 30 but failed to file the return. In the case of dividends received from a corporation that was not required to file a return during the year ending September 30, the proportion of dividends deductible by the stockholder shall be determined by the Secretary from the best information available."

Sec. 13. G.S. 105-130.27(g) reads as rewritten:

"(g) Expiration. This section applies only to costs incurred during taxable years beginning prior to January 1, ~~1993,~~ 1994."

Sec. 14. G.S. 105-130.40(b1) reads as rewritten:

"(b1) Eligibility. -- A corporation is eligible for the tax credit allowed by this section only if it obtained a credit under this section for taxable year 1988 or the Department of Commerce Economic and Community Development determines that it engages in the manufacturing of goods, or that it engages in an industrial activity such as the processing of foods, raw materials, chemicals and process agents, goods in process, or of finished products."

Sec. 15. G.S. 105-134.1(11) reads as rewritten:

"(11) Person. An individual, a fiduciary, ~~a partnership, or a corporation,~~ or a partnership. The term includes an officer or employee of a corporation or a member or employee of a partnership who, as officer, employee, or member, is under a duty to perform an act in meeting the requirements of this Division."

Sec. 16. G.S. 105-134.2 reads as rewritten:

"§ 105-134.2. *Individual income tax imposed.*

(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

- (1) For married individuals who file a joint return under G.S. 105-152.1 and for surviving spouses, as defined in section 2(a) of the Code:

On the North Carolina taxable income up to twenty-one thousand two hundred fifty dollars (\$21,250), six percent (6%); and

On the excess over twenty-one thousand two hundred fifty dollars (\$21,250), seven percent (7%).

- (2) For heads of households, as defined in section 2(b) of the Code:

On the North Carolina taxable income up to seventeen thousand dollars (\$17,000), six percent (6%); and

On the excess over seventeen thousand dollars (\$17,000), seven percent (7%).

- (3) For unmarried individuals other than surviving spouses and heads of households:

On the North Carolina taxable income up to twelve thousand seven hundred fifty dollars (\$12,750), six percent (6%); and

On the excess over twelve thousand seven hundred fifty dollars (\$12,750), seven percent (7%).

- (4) For married individuals who do not file a joint return under G.S. 105-152.1:

On the North Carolina taxable income up to ten thousand six hundred twenty-five dollars (\$10,625), six percent (6%); and

On the excess over ten thousand six hundred twenty-five dollars (\$10,625), seven percent (7%).

(b) In lieu of the tax imposed by subsection (a) of this section, there is imposed for each taxable year upon the North Carolina taxable income of every individual a tax determined under tables, applicable to the taxable year, which may be prescribed by the Secretary of Revenue. The tables prescribed under this subsection shall be in the form the Secretary deems appropriate, and the amounts of the tax shall be computed on the basis of the rates prescribed by subsection (a) of this section. This subsection does not apply to an individual making a return under section 443(a)(1) of the Code for a period of less than 12 months on account of a change in the individual's annual accounting period, or to an estate or trust. The tax imposed by this subsection shall be treated as the tax imposed by subsection (a) of this section."

Sec. 17. G.S. 105-151(a)(3) reads as rewritten:

"(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which ~~such the~~ taxes are assessed ~~must~~ shall be filed with the Secretary at, or prior to, the time credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed."

Sec. 18. G.S. 105-151.8(b) reads as rewritten:

"(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. ~~105-152.2~~ ~~[105-152.1]~~ 105-152.1. Where only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section."

Sec. 19. G.S. 105-154(b) reads as rewritten:

"(b) Every partnership doing business in the State required to file a return under the Code shall make a return stating specifically the items of its gross income and the deductions allowed under the Code and the adjustments required by this Division, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributable, and the amount of the distributive share of each individual, together with the distributive shares of corporation dividends. The return shall be signed by one of the partners under affirmation in the form prescribed in G.S. 105-155 of this Division, and the same penalties prescribed in G.S. 105-236

shall apply in the event of a willful misstatement. If a business established in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report the earnings of the business in this State and the distributive share of the income of each nonresident owner or partner, and shall pay the tax as levied on individuals under ~~G.S. 105-134.2~~ G.S. 105-134.2(a)(3) for each nonresident owner or partner. The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the profits of the business in this State."

Sec. 20. G.S. 105-156 reads as rewritten:

"§ 105-156. *Failure to file returns; supplementary returns.*

If the Secretary is of the opinion that any taxpayer has failed to file a return or to include in a return filed, either intentionally or through error, taxable income, the Secretary may require from the taxpayer a return or supplementary return, under oath, in such form as the Secretary shall prescribe, of all the items of gross income the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this Division. If from a supplementary return or otherwise the Secretary finds that any taxable income has been omitted from the original return, ~~of~~ he may require the taxable income so omitted to be disclosed to him under oath of the taxpayer, and to be added to the original return. The supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties under G.S. 105-236. The Secretary may proceed under the provisions of G.S. 105-241.1 whether or not he requires a return or a supplementary return under this section."

Sec. 21. G.S. 105-160.2 reads as rewritten:

"§ 105-160.2. *Imposition of tax.*

The tax imposed by this Division shall apply to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Division. The taxable income of an estate or trust shall be the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, except that the adjustments provided in G.S. 105-134.6 and G.S. 105-134.7 shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax shall be computed at the following percentages of ~~an~~ the amount equal to ~~of the taxable income multiplied by a fraction, the numerator of which is the~~ of an ~~estate or trust's gross income from North Carolina sources, plus the gross income from sources outside of the State and from intangible sources~~ trust ~~which is for the benefit of a resident of this State, and the denominator of which is the estate or trust's gross income as~~

~~calculated under the Code.~~ or for the benefit of a nonresident to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State. For purposes of the preceding sentence, taxable income and gross income shall be computed subject to the adjustments provided in G.S. 105-134.6 and G.S. 105-134.7. The tax shall be at six percent (6%) on the first twelve thousand seven hundred fifty dollars (\$12,750) of the amount computed above; and at seven percent (7%) of the excess of the amount computed above over twelve thousand seven hundred fifty dollars (\$12,750). The tax computed under the provisions of this Division shall be paid by the fiduciary responsible for administering the estate or trust."

Sec. 22. The title of Article 4A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 4A.

Withholding of Income Taxes from Wages and
~~Filing of Declarations of Estimated~~
Income and Payment of Income
Tax by Individuals."

Sec. 23. G.S. 105-163.16(c) reads as rewritten:

"(c) Where there has been an overpayment (as specified in subsections (a) and (b) of this section) of any tax imposed under Article 4 of this Chapter, as disclosed by the taxpayer's annual return required to be filed by Article 4, the amount of such overpayment shall be refunded to the taxpayer; except that overpayments of less than one dollar (\$1.00) shall be refunded only upon receipt by the Secretary of a written demand for such refund from the taxpayer and except that there shall be no refund to the taxpayer of any sum set-off under the provisions of Chapter 105A, the Set-off Debt Collection Act. Every refund authorized by this section shall be made as expeditiously as possible, and within six months from the date on which the annual return is filed or due to be filed, whichever is later, insofar as the same is practicable; except that no refunds for overpayment of estimated tax shall be made by the Secretary prior to the date on which the final return is filed by the taxpayer. No interest shall be paid with respect to any such refund if the refund is made within the six months' period above referred to. Interest computed at the rate established in G.S. 105-241.1(i) for assessments shall be paid on refunds made after the expiration of said six months' period, such interest to be computed from the time of the expiration of said six months' period until paid. It shall not be necessary for the Attorney General or any member of his staff to approve such refund. The

making of such refund does not absolve any taxpayer of any income tax liability which may in fact exist and the Secretary may make any assessment for any deficiency in the manner provided in ~~Article 4~~ Article 9 of this Chapter. No overpayment of tax by the taxpayer shall be refunded irrespective of whether upon discovery or receipt of written demand if such discovery is not made or such demand is not received within three years from the date set by the statute for the filing of the annual return by the taxpayer or within six months of the payment of the tax alleged to be an overpayment, whichever date is the later."

Sec. 24. G.S. 105-188(i) reads as rewritten:

"(i) The tax does not apply to tuition payments made on behalf of an individual to an educational institution or to medical payments made on behalf of an individual to a provider of medical care, as defined in ~~G.S. 105-147(11)b1.~~ in the Code for the care of that individual. The term 'educational institution' includes only those institutions that normally maintain a regular faculty and curriculum and normally have a regularly organized body of students in attendance where the educational activities are conducted."

Sec. 25. G.S. 105-204 reads as rewritten:

"§ 105-204. *Beneficial interest in foreign trusts.*

The beneficial or equitable interest on December 31 of each year of any resident of this State, or of a nonresident having a business, commercial or taxable situs in this State, in any trust, trust fund or trust account (including custodian accounts) held by a foreign fiduciary, shall be subject to an annual tax, which is hereby levied, of twenty-five cents (25¢) on every one hundred dollars (\$100.00) of the total actual value thereof less, however, the proportion of such value as is equal to the proportion of the beneficiary's income from the trust, trust fund, or trust account (including custodian accounts) that is attributable to (i) interest received by the fiduciary on bonds, notes or other evidences of debt of the United States, State of North Carolina, subdivisions of this State, or agencies of such governmental units and (ii) dividends received by the fiduciary on shares of stock ~~which, or to the extent that the same, are the dividends would be deductible by the beneficiary in computing his income tax liability under the provisions of subdivision (7) of G.S. 105-147 without regard to the fifteen-thousand-dollar (\$15,000) limitation under subdivision (7) of G.S. 105-147; a corporate shareholder under G.S. 105-130.7(1), (2), (3), (3a), or (5) except that no deduction shall be allowed for dividends deemed distributable from earnings for a taxable period during which the corporation is an S Corporation subject to the provisions of Division I-S of Article 4 of this Chapter; provided, however, that a resident beneficiary of a foreign trust shall be allowed~~

a credit against any tax due under this section for any foreign intangibles tax paid on his beneficial interest in a foreign trust.

The value of the corpus of such trust, trust fund or trust account shall not be considered in computing taxable value hereunder, unless the person subject to the tax:

- (1) Has the right to the present possession of an interest therein, and then only to the extent of the value of such present interest; or
- (2) Has the present right to receive a part or all of the income realized from the corpus of such trust, and then only to the extent of the present value of such income interest; or
- (3) Has created the trust and reserved for himself an income, reversionary or remainder interest therein, and then only to the extent of the present value of such interest."

Sec. 26. G.S. 105-212(a) reads as rewritten:

"(a) None of the taxes levied in this Article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to trusts established for religious, educational, charitable or benevolent purposes where none of the property or the income from the property owned by such trust may inure to the benefit of any individual or any organization conducted for profit, nor to any funds, evidences of debt, or securities held irrevocably in a charitable remainder trust meeting the requirements of section 664 of the Code or in a pooled income fund meeting the requirements of section 642(c)(5) of the Code, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; nor to any funds, evidences of debt, or securities held irrevocably in pension, profit-sharing, stock bonus, or annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, if such trusts qualify for exemption from income tax under the provisions of ~~G.S. 105-161(f)(1)a; Code;~~ nor to any funds, evidences of debt or securities held irrevocably in a pension, profit-sharing, stock bonus or annuity plan established by an employer for the benefit of his employees or for himself and his employees if such plan qualifies for exemption from income tax under the provisions of ~~G.S. 105-141(b)(19);~~ section 401 of the Code; nor to any funds, evidences of debt, or securities held in an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code. if such individual retirement account or individual retirement annuity is exempt from income tax under the provisions of ~~G.S. 105-161(f)(1)c or G.S. 105-141(b)(19);~~ section 408(e) of the Code."

Sec. 27. G.S. 105-228.5 reads as rewritten:

" § 105-228.5. *Taxes measured by gross premiums.*

Every insurance company and every Articles 65 and 66 of Chapter 58 corporation shall pay to the Commissioner of Insurance, at the time and rates provided in this section, a tax measured by gross premiums from business done in this State during the preceding calendar year, or, for Articles 65 and 66 of Chapter 58 corporations, a tax measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by such corporations during the preceding calendar year.

Gross premiums from business done in this State in the case of life insurance and annuity contracts, including any supplemental contracts thereto providing for disability benefits, accidental death benefits, or other special benefits, shall for the purposes of the taxes levied in this section mean any and all premiums collected in the calendar year (other than for contracts for reinsurance) for policies the premiums on which are paid by or credited to persons, firms or corporations resident in this State, or in the case of group policies for any contracts of insurance covering persons resident within this State, with no deduction for considerations paid for annuity contracts which are subsequently returned except as below specified, and with no other deduction whatsoever except for premiums returned under one or more of the following conditions: premiums refunded on policies rescinded for fraud or other breach of contract; premiums which were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate; and in the case of group annuity contracts the premiums returned by reason of a change in the composition of the group covered. Said gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend or in any other manner whatsoever, except in the case of premiums waived by any of said companies pursuant to a contract for waiver of premium in case of disability.

An insurer, in computing its premium taxes, shall pay premium taxes on a premium for the purchase of annuities at the time the contract holder elects to commence annuity benefits, instead of at the time the premium is collected.

Every insurer, in computing the premium tax, shall exclude from the gross amount of premiums all premiums received on or after July 1, 1973, from policies or contracts, issued in connection with the funding of a pension, annuity or profit-sharing plan, qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the Code as defined in ~~G.S. 105-135(15)~~ G.S. 105-134.1(1) and the gross amount

of all such premiums shall be exempt from the tax levied by this section.

Gross premiums from business done in this State in the case of contracts for fire insurance, casualty insurance, and any other type of insurance except life and annuity contracts as above specified, including contracts of insurance required to be carried by the Workers' Compensation Act, shall for the purposes of the taxes levied in this section mean any and all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether such premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for such premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees or assessments for adjustment of policy rates or for cancellation or surrender of policies.

In determining the amount of gross premiums from business in this State all gross premiums received in this State, or credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property or risks resident or located in this State except for such premiums as are properly reported and properly allocated as being received from business done in some other nation, territory, state or states, and except for premiums from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

The tax rate to be applied to gross premiums collected on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The tax rate to be applied to gross premiums collected on annuities and all other insurance contracts issued by insurers shall be one and seventy-five hundredths percent (1.75%). The tax rate to be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage (except marine and automobile policies) shall be one and thirty-three hundredths percent (1.33%) in addition to the one and seventy-five hundredths percent (1.75%) tax. Twenty-five percent (25%) of the net proceeds of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall be deposited in the Rural Volunteer Fire Department

Fund established in Articles 84 through 88 of Chapter 58 of the General Statutes. Effective July 1, 1988, the tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Articles 65 and 66 of Chapter 58 corporations shall be one-half of one percent (1/2 of 1%).

The taxes levied herein measured by premiums and/or membership dues shall be in lieu of all other taxes upon insurance companies except: fees and licenses under this Article, or as specified in Articles 1 through 64 of Chapter 58 of the General Statutes of North Carolina as amended; taxes imposed by Articles 84 through 88 of Chapter 58 of the General Statutes of North Carolina; taxes imposed by Article 5 of Chapter 105 of the General Statutes of North Carolina as amended; and ad valorem taxes upon real property and personal property owned in this State.

For the tax above levied as measured by gross premiums and/or gross collections from membership dues exclusive of receipts from cost plus plans the president, secretary, or other executive officer of each insurance company and Articles 65 and 66 of Chapter 58 corporation doing business in this State shall within the first 15 days of March file with the Commissioner of Insurance a full and accurate report of the total gross premiums as above defined or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The report shall be in such form and contain such information as the Commissioner of Insurance may specify, and the report shall be verified by the oath of the company official transmitting the same or by some principal officer at the home or head office of the company or association in this country. At the time of making such report the taxes above levied with respect to the gross premiums or the gross collections from membership dues shall be paid to the Commissioner of Insurance. The provisions above shall likewise apply as to reports and taxes for any firm, corporation, or association exchanging reciprocal or interinsurance contracts, and said reports and taxes shall be transmitted by their attorneys-in-fact.

Insurance companies and Articles 65 and 66 of Chapter 58 corporations subject to the tax imposed by this section with a premium tax liability of ten thousand dollars (\$10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least twenty-seven and one-half percent (27 1/2%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall

remit the balance by the following March 15 in the same manner provided in this section for annual returns. For taxable years beginning on or after January 1, 1989, each of the three quarterly installments shall be equal to at least thirty-three and one-third percent (33 1/3%) and payment of these installments shall be made on or before April 15, June 15, and October 15 of each taxable year. The balance shall be remitted by the following March 15 in the same manner provided in this section for annual returns.

The Commissioner of Insurance may, by regulation, permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

If a company does not meet the installment payment requirement of this section, the Commissioner of Insurance shall assess a penalty on underpayments that is equal to the interest rate adopted by the Secretary of Revenue under G.S. 105-241.1(i). Any overpayment shall be credited to the company and applied against the taxes imposed upon the company under this Article.

The provisions as to reports and taxes as measured by gross premiums shall not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members.

With respect to the taxes levied in this section on the equivalent of premiums of self-insurers under the provisions of the Workers' Compensation Act, the reports required herein shall be transmitted to and the taxes collected by the Insurance Commissioner as provided in G.S. 97-100(j)."

Sec. 28. G.S. 105-269.4 reads as rewritten:

"§ 105-269.4. *Election to apply income tax refund to following year's tax.*

Any ~~person~~ taxpayer required to file an income tax return under Article 4 of this Subchapter whose return shows that the ~~person~~ taxpayer is entitled to a refund may elect to apply part or all of the refund to that ~~person's~~ taxpayer's estimated income tax liability for the following year. The Secretary of Revenue shall amend the income tax returns to permit the election authorized by this section."

Sec. 29. G.S. 105-277.3(a) reads as rewritten:

"(a) The following classes of property are hereby designated special classes of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed and taxed as hereinafter provided:

- (1) Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that

are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars (\$1,000). Gross income includes income from the sale of the agricultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

- (2) Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, ~~which~~ have either:
 - a. Been used to produce evergreens intended for use as Christmas trees and met the qualifying or gross income requirements established by the Department of Revenue for the land; or
 - b. Produced an average gross income of at least one thousand dollars (\$1,000).

Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products.

- (3) Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit."

Sec. 30. G.S. 20-80.1(a) reads as rewritten:

"(a) The Commissioner shall cause to be made a sufficient number of distinctive motor vehicle license plates, in the form hereafter provided, for issuance to eligible members of the reserve components of the armed forces of the United States, upon proper application and under such regulations as he deems appropriate. Upon satisfactory proof of eligibility, the commissioner shall collect a fee in an amount equal to the applicable fee under G.S. 20-87 plus ten dollars (\$10.00). ~~Fees collected under~~ The additional fee imposed by this section shall be ~~deposited in~~ credited to the Personalized Registration Plate Fund."

Sec. 31. G.S. 20-81.3(c) reads as rewritten:

"(c) One-half of the revenue derived from the additional fee shall be ~~deposited in~~ credited to the Recreation and Natural Heritage Trust

Fund established under G.S. 113-77.7. The remaining one-half of the revenue derived from the additional fee for the special personalized registration plates shall be ~~placed in~~ credited to a separate fund designated the 'Personalized Registration Plate Fund'. After deducting the cost of the plates, plus budgetary requirements for advertising, handling, and issuance to be determined by the Commissioner, the revenue in the Personalized Registration Plate Fund shall be transferred quarterly as follows:

- (1) Thirty-three percent (33%) to the account of the Department of Economic and Community Development to aid in financing out-of-state print and other media advertising under the program for the promotion of travel and industrial development in this State.
- (2) Fifty percent (50%) to the Department of Transportation to be used solely for the purpose of beautification of highways other than those designated as interstate. These funds shall be administered by the Department of Transportation for beautification purposes not inconsistent with good landscaping and engineering principles.
- (3) Seventeen percent (17%) to the account of the Department of Human Resources to promote travel accessibility for disabled persons in this State. These funds shall be used: to collect and update site information on travel attractions designated by the Department of Economic and Community Development in ~~their~~ its publications; to provide technical assistance to travel ~~attraction~~ attractions concerning accommodation of disabled tourists; and to develop, print, and promote the publication ACCESS NORTH CAROLINA. The Department of Human Resources shall make copies of ACCESS NORTH CAROLINA available to the Department of Economic and Community Development for ~~their~~ its use in Welcome Centers and other appropriate Department of Economic and Community Development offices.
- (4) The Department of Economic and Community Development shall promote ACCESS NORTH CAROLINA in ~~their~~ its publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Human Resources on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Economic and Community Development shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Human Resources.

- (5) Funds allocated by this ~~section~~ subsection for promotion of travel accessibility and ACCESS NORTH CAROLINA which are not spent and are not obligated at the end of the fiscal year shall not revert but shall be transferred to the Department of Administration for removal of man-made barriers to disabled travelers at State-funded travel attractions. Guidelines for the removal of man-made barriers shall be developed in consultation with the Department of Human Resources."

Sec. 32. G.S. 20-81.5(b) reads as rewritten:

"(b) ~~Fees collected under~~ The additional fee imposed by this section shall be ~~deposited in~~ credited to the Personalized Registration Plate Fund."

Sec. 33. G.S. 20-81.10(a) reads as rewritten:

"(a) The Commissioner shall cause to be made a sufficient number of distinctive motor vehicle license plates for issuance to eligible persons who make application on a form designed by the Division and supply documentation that they were members of the U.S. Military Service and were present at the attack on Pearl Harbor on December 7, 1941. Upon satisfactory proof of eligibility, the Commissioner shall collect a fee in an amount equal to the applicable fee under G.S. 20-87 plus ten dollars (\$10.00). ~~Fees collected under~~ The additional fee imposed by this section shall be ~~deposited in~~ credited to the Personalized Registration Plate Fund."

Sec. 34. G.S. 20-81.11(a) reads as rewritten:

"(a) The Commissioner shall cause to be made a sufficient number of distinctive motor vehicle license plates for issuance to eligible persons who make application on a form designed by the Division and supply documentation that they were members of the U.S. Military Service and were recipients of the Purple Heart Award. Upon satisfactory proof of eligibility, the Commissioner shall collect a fee in an amount equal to the applicable fee under G.S. 20-87 plus ten dollars (\$10.00). ~~Fees collected under~~ The additional fee imposed by this section shall be ~~deposited in~~ credited to the Personalized Registration Plate Fund."

Sec. 35. Section 4 of this act shall become effective July 1, 1990. Sections 16 and 21 of this act are effective for taxable years beginning on or after January 1, 1990. Sections 25 and 26 of this act are effective retroactively for taxable years beginning on or after January 1, 1989. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1990.

AN ACT TO CLARIFY THE DEFINITION OF NEGLECTED CHILD WITHIN THE JUVENILE JURISDICTION OF THE DISTRICT COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-517(21) reads as rewritten:

"(21) Neglected Juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from his parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care or other remedial care recognized under State law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of abuse or neglect or lives in a home where another juvenile has been subjected to sexual abuse or severe physical abuse by an adult who regularly lives in the home."

Sec. 2. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 25th day of June, 1990.

AN ACT TO ADD AGE AND HANDICAP TO THE AUTHORIZED PURPOSES OF THE FAIR HOUSING LAWS OF THE CITY OF RALEIGH.

The General Assembly of North Carolina enacts:

Section 1. Subdivision (72) of Section 22 of the Charter of the City of Raleigh, being Chapter 1184, Session Laws of 1949, as added by Section 5 of Chapter 561, Session Laws of 1975, reads as rewritten:

"(72) Equal housing. To adopt ordinances designed to insure that housing opportunities in the City of Raleigh shall be equally available to all persons without regard to race, color, religion, ~~sex or national origin~~ sex, national origin, age or handicap. Such ordinances may regulate or prohibit any act, practice, activity or procedure related directly or indirectly to the sale or rental of public or private housing which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons. Such ordinances may provide that violations constitute a criminal offense; may subject the offender to civil penalties; may provide that the city may enforce the

ordinances by application to the General Court of Justice for appropriate equitable remedies, including mandatory and prohibitory injunctions and orders of abatement."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1990.

H.B. 807

CHAPTER 817

AN ACT TO AMEND THE RALEIGH CIVIL SERVICE ACT TO MAKE A TECHNICAL CORRECTION AND CLARIFY THAT INTERVENING PARTIES MAY NOT BE AWARDED ATTORNEY FEES.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 241, Session Laws of 1981, reads as rewritten:

"Sec. 5. Appeal board. The Civil Service Commission shall act as an appeal board to hear all appeals of employees regarding violation of city ~~policy~~, policy relating to suspensions, layoff, removal, promotions, forfeiture of pay or loss of time, but the Commission shall have no jurisdiction to hear an appeal until all administrative remedies have been exhausted pursuant to the city's established grievance procedure. The Commission shall have no jurisdiction to hear matters involving lateral transfers unless it finds that such transfer was in effect a demotion. The Commission shall have the authority to affirm, modify, or reverse, as it deems necessary, those actions over which it has jurisdiction; provided, however, the Commission may not institute any action that will affect the right of other employees without first making all such employees a party to the proceeding. The Commission shall hear no appeals based on a failure to be promoted until the City Manager has completed the formal procedure for filling the vacancy and has named a person to fill the vacant position. Any modification or reversal of an administrative officers' decision or any other decision by the Commission shall require four affirmative votes. The Commission shall not have the authority to award actual damages, except salary adjustment and back pay. It shall not have the authority to award punitive damages. Reasonable attorney fees may be awarded upon the rendering of a decision or settlement in favor of the petitioning employee. The Commission shall have no authority to award attorney fees or costs to anyone allowed to intervene pursuant to this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1990.

H.B. 2044

CHAPTER 818

AN ACT TO MAKE A TECHNICAL CORRECTION IN THE DESCRIPTION OF LAKE ADGER IN A 1989 ACT CONCERNING A "SLOW-NO-WAKE" AREA.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 253, Session Laws of 1989, reads as rewritten:

"Section 1. It is unlawful to operate a motorboat at greater than no-wake speed within the area of the ~~inlet~~ inlets of Lake Adger located in Polk County lying north of ~~a line running from the end of the point on which Red Barn Landing is located South 69 degrees West (true) approximately 1,800 feet to the beach on the north side of the lake~~ the line beginning at a culvert located to the west of the Red Barn Landing and running South 35 degrees East 1,600 feet to a marker; thence North 35 degrees East 1,200 feet to a point on the Southwestern shore of Hodge Cove. For purposes of this act, 'no-wake speed' means idle speed or slow speed creating no appreciable wake."

Sec. 2. This act shall become effective 10 days after ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1990.

H.B. 2064

CHAPTER 819

AN ACT TO ADD TWO MEMBERS TO THE BOARD OF EDUCATION OF DARE COUNTY AND TO PROVIDE FOR THE ELECTION OF THE MEMBERS OF SAID BOARD.

The General Assembly of North Carolina enacts:

Section 1. The membership of the Dare County Board of Education is hereby temporarily increased to seven members until the first Monday in December of 1994. There is added one seat to be filled by a new member to be elected from Atlantic Township and one seat to be filled from Dare County at large.

Sec. 2. The person elected to fill the Atlantic Township seat shall be elected in the November 6, 1990, general election, shall take office on the first Monday in December 1990, and shall hold office for a term of four years, which term shall expire and terminate on the first Monday in December 1994.

Sec. 3. The person elected to fill the at-large seat shall be elected in the November 6, 1990, general election, shall take office on the first Monday in December 1990, and shall hold office for a term of two years, which term shall expire on the first Monday in December 1992. In the primary election held in 1992 and quadrennially thereafter, there shall be elected a member from the County at large to serve for a four-year term.

Sec. 4. On the first Monday in December of 1994, the three seats currently filled by members elected from the Manteo School District shall expire and terminate.

Sec. 5. On the first Monday in December of 1992, the term of the current member of the Board of Education elected from the Hatteras School District shall expire. Thereupon the seat shall be filled by a member who shall reside in either Kinnekeet or Hatteras Township who shall be elected in the May 1992 primary election and quadrennially thereafter for a four-year term.

Sec. 6. On the first Monday in December of 1992, the term of the current member of the Board of Education elected from the Kitty Hawk School District shall expire. Thereupon the seat shall be filled by a member who shall reside in Atlantic Township who shall be elected in the 1992 primary election and quadrennially thereafter for a four-year term.

Sec. 7. On the first Monday in December of 1994, there is hereby created a seat on the Board of Education which shall be filled by a member who shall reside in either Nags Head, Croatan, or East Lake Townships. The member shall be elected in the 1994 primary election, and quadrennially thereafter for a term of four years.

Sec. 8. On the first Monday in December of 1994, there is hereby created an at-large seat on the Board of Education which shall be filled by a resident of the County at large, to be elected in the 1994 primary election and quadrennially thereafter for a four-year term.

Sec. 9. As provided by Sections 1 through 8 of this act, as of the first Monday in December of 1994, the Dare County Board of Education shall consist of five seats filled with members as follows:

Atlantic Township - one member

Hatteras/Kinnekeet Township - one member

Nags Head/Croatan/East Lake Township - one member

Dare County at large - two members.

All elections under this act shall be nonpartisan, at-large, plurality elections held in the primary election with all candidates being voted upon, at large, by all eligible voters of Dare County. Candidates for the respective seats shall have their principal residence as stated by this section. Except as provided in Section 3 of this act, all terms shall be for four years. It is the intention of this act that in

the primary election of 1992 there shall be elected three members to serve for four years each, one from Atlantic Township, one from Hatteras or Kennekeet Township, and one from the County at large. Further, in the primary election of 1994, there shall be elected two members of the Dare County Board of Education to serve for four years each, one from Nags Head, Croatan or East Lake Townships and one from Dare County at large.

Sec. 10. The Dare County Board of Elections shall hold a filing period which shall open at 12:00 noon on July 6, 1990, and close at 12:00 noon on August 3, 1990, for candidates to file for the new Atlantic Township and at-large seats.

Sec. 11. Except as herein provided, the constitution of and election of the Dare County Board of Education shall be in accordance with Article 5 of Chapter 115C of the General Statutes and general election law.

Sec. 12. Chapter 147, Session Laws of 1971, is repealed, except that such repeal does not affect the terms of office of members elected prior to the effective date of this act.

Sec. 13. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1990.

H.B. 2111

CHAPTER 820

AN ACT TO CHANGE THE PAY DATE FOR THE HAYWOOD COUNTY SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 399 of the 1989 Session Laws reads as rewritten:

"Section 1. Notwithstanding G.S. 115C-302(a) and G.S. 115C-316(a), the ~~Winston-Salem/Forsyth County and Haywood County Boards~~ Board of Education may pay ~~their~~ its academic teachers, occupational education teachers, guidance counselors, assistant principals, and other instructional personnel employed for less than 12 months of the school year on the ~~16th~~ 13th day of each month during which they are employed."

Sec. 2. This act applies only to the Haywood County School Administrative Unit.

Sec. 3. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 26th day of June, 1990.

S.B. 647

CHAPTER 821

AN ACT TO PROVIDE A MEANS FOR FINANCING ALL OR PART OF A CONVENTION CENTER IN CHARLOTTE.

The General Assembly of North Carolina enacts:

Section 1. Part IV. of Chapter 908 of the 1983 Session Laws is rewritten to read:

"Part IV. Mecklenburg Occupancy Tax and Prepared Food and Beverage Tax.

"Sec. 5. (a) Intent. It is the intent of this Part to provide Mecklenburg County and each municipality in Mecklenburg County the authority to levy a room occupancy tax and to provide Mecklenburg County and the City of Charlotte the authority to levy a prepared food and beverage tax.

(b) Definitions. The definitions in G.S. 105-164.3 apply to this Part insofar as they are not inconsistent with the provisions of this Part. In addition, the following definitions apply in this Part.

- (1) Financing. Debt service, lease payments, or any other obligations or means of supporting capital costs, together with any related reserve requirements.
- (2) Gross Occupancy Receipts. The gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within a taxing entity that is subject to a tax levied pursuant to Section 6 of this Part.
- (3) Local Administrative Authority. Mecklenburg County or the City of Charlotte as the tax collector and administrator of any or all of the taxes levied pursuant to this Part.
- (4) Net Proceeds. The gross proceeds less the deductions by the local administrative authority pursuant to Section 9(a)(1) of this Part to pay for the cost of administering and collecting the taxes authorized by this Part.
- (5) Prepared Food and Beverages. Any food or beverage which a retailer has added value to or has altered its state (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption.
- (6) Retailer. The term includes caterers and all persons regarded by the Secretary of Revenue as retailers under G.S. 105-164.3 as of the effective date of this Part.
- (7) Taxing Entity. A local sovereignty that levies a tax pursuant to this Part.

- (8) **Taxable Establishment.** Any hotel, motel, inn, tourist camp, or similar place that is subject to a room occupancy tax levied pursuant to this Part and any retailer that sells meals or prepared food or beverages and is subject to a prepared food and beverage tax levied pursuant to this Part.

(c) **Relationship to the Sales and Use Tax Statutes.** The definitions in G.S. 105-164.3 shall apply to this Part insofar as they are not inconsistent with the provisions of this Part. All other provisions of Article 5 and Article 9 of Subchapter I, Chapter 105 of the General Statutes, as the same relate to the North Carolina Sales and Use Tax Act, shall be applicable to this Part and administered by the local administrative authority unless the provisions are inconsistent with the provisions of this Part. It is the intention of this Part that the provisions of this Part and the provisions of the North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized. The provisions with respect to remedies and penalties applicable to the North Carolina Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter I, Chapter 105 of the General Statutes, shall be applicable in like manner to the taxes authorized to be levied and collected under this Part, to the extent that the same are not inconsistent with any provision of this Part.

"Sec. 6. (a) **County Room Occupancy Tax.** Mecklenburg County may, by resolution of its Board of Commissioners, levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). If a municipality has levied a room occupancy tax under Section 6(b) of this Part, then Mecklenburg County may levy the tax at a rate that does not exceed six percent (6%) when combined with the highest rate of tax then levied by any municipality. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose or to accommodations furnished to the same person for ninety continuous days or more.

(b) **City Room Occupancy Tax.** Effective 120 days after the effective date of this Part, if at any time Mecklenburg County has not levied a room occupancy tax, or has levied the tax at a rate less than six percent (6%), then any municipality in Mecklenburg County may, by ordinance of its town council, levy a room occupancy tax on the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the municipality that is subject to sales tax

imposed by the State under G.S. 105-164.4(a)(3). The tax shall be at a rate that does not exceed six percent (6%) when combined with the Mecklenburg County room occupancy tax rate, if any. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose or to accommodations furnished to the same person for ninety continuous days or more.

"Sec. 7. (a) County Prepared Food and Beverage Tax. Mecklenburg County may, by resolution of its Board of Commissioners, levy a prepared food and beverage tax of up to one percent (1%) of the sales price of meals and prepared food and beverages sold at retail for consumption on or off the premises by any retailer within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(1). If the City of Charlotte has levied a prepared food and beverage tax under Section 7(b) of this Part, then Mecklenburg County may levy the tax at a rate that does not exceed one percent (1%) when combined with the rate of tax then levied by the City of Charlotte. This tax is in addition to any State or local sales tax.

(b) Charlotte Prepared Food and Beverage Tax. Effective 120 days after the effective date of this Part, if at any time Mecklenburg County has not levied or adopted a resolution to levy a prepared food and beverage tax, or has levied or adopted a resolution to levy the tax at a rate less than one percent (1%), then the City of Charlotte may, by ordinance of its city council, levy a prepared food and beverage tax on the sales price of meals and prepared food and beverages sold at retail for consumption on or off the premises by any retailer within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(1). The tax shall be at a rate that does not exceed one percent (1%) when combined with the Mecklenburg County prepared food and beverage tax rate, if any. This tax is in addition to any State or local sales tax.

(c) Exemptions. The prepared food and beverage tax does not apply to the following sales of meals and prepared food and beverages:

- (1) Meals and prepared food and beverages served to residents in boarding houses and sold together on a periodic basis with rental of any sleeping room or lodging.
- (2) Retail sales exempt from taxation under G.S. 105-164.13 on the effective date of this Part.
- (3) Retail sales through or by means of vending machines.
- (4) Meals and prepared food and beverages served by any taxable establishment subject to the occupancy tax levied pursuant to this Part if the charge for the meals or prepared

food or beverages is included in a single, nonitemized sales price together with the charge for rental of a room, lodging, or accommodation furnished by the taxable establishment.

- (5) Meals and prepared food and beverages furnished without charge by an employer to any employee.
- (6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments other than sales of prepared food and beverages in the delicatessen or similar department of the grocer or grocery section.

"Sec. 8. (a) Public Hearing. Before adopting or amending an ordinance or resolution levying a tax authorized by this Part, the governing body of the taxing entity shall hold a public hearing. The governing body of the taxing entity shall publish notice of the hearing not less than 10 days nor more than 25 days before the date fixed for the hearing.

(b) Effective Date of Levy. A tax levied under this Part shall become effective on the date specified in the resolution or ordinance levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution or ordinance is adopted. The levy of a prepared food and beverage tax may not be effective before January 1, 1992.

(c) Repeal. A tax levied under this Part may be repealed by a resolution or ordinance adopted by the governing body of the taxing entity. Repeal of a tax levied under this Part shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution or ordinance was adopted. Repeal of a tax levied under this Part does not affect a liability for a tax that has attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

(d) Collection. Every operator of a taxable establishment shall, on and after the effective date of the levy of a tax under this Part, collect the tax. The tax shall be stated and charged separately from the rental charge or sales price, shall be shown separately on the taxable establishment's sales records and shall be paid by the purchaser to the taxable establishment as trustee for and on account of the taxing entity. The tax shall be added to the rental charge or sales price and shall be passed on to and collected from the purchaser instead of being borne by the taxable establishment.

For the convenience of each retailer and to facilitate the administration of this Part, the local administrative authority shall determine the amount to be added to the sales price of all sales subject to the prepared food and beverage tax. The amounts shall be set forth

in a bracket system and distributed to each retailer responsible for collecting the prepared food and beverage tax. The use of the bracket system does not relieve the retailer from the duty and liability of collecting and remitting to the local administrative authority an amount equal to the prepared food and beverage tax levied by the taxing entity.

(e) Administration. Mecklenburg County and the City of Charlotte shall determine by agreement which of them will administer and collect each of the taxes levied pursuant to this Part. In the event an agreement cannot be reached, then any tax levied pursuant to this Part shall be administered and collected by Mecklenburg County. The local administrative authority may promulgate additional rules and regulations necessary for the implementation of this Part.

The taxes levied pursuant to this Part are due and payable to the local administrative authority as agent for the taxing entity in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every taxable establishment liable for the tax shall, on or before the 15th day of each month, prepare and render a return to the local administrative authority. The local administrative authority shall design, print, and furnish to all taxable establishments the necessary forms for filing returns and instructions to ensure the full collection of the tax.

A return filed with the local administrative authority under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(f) Penalties. A person, firm, corporation, or association who fails or refuses to file a return and pay the tax due under this Part shall pay a penalty of ten dollars (\$10.00) for each day's omission up to a maximum of two thousand dollars (\$2,000) for each return. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The governing body of the taxing entity may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this Part or who willfully fails to pay the tax or make and file a return shall, in addition to the penalties provided by law, be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

"Sec. 9. (a) Distribution and Use of Proceeds. The local administrative authority, acting on its own behalf or as agent for each

taxing entity, shall distribute the proceeds of the taxes levied in this Part as provided in this subsection. The distribution shall be made by the 20th day of each month following the month in which the tax is collected.

- (1) Deduction of Administrative Expense. The local administrative authority may deduct from the gross proceeds of the taxes collected under this Part an amount not to exceed three percent (3%) of the amount collected to pay for the direct cost it has incurred in administering and collecting the taxes authorized by this Part.
- (2) Distribution to Charlotte for Convention Center Facilities. After deducting the amount provided above, the local administrative authority shall transfer an amount equal to three percent (3%) of the gross occupancy receipts and the entire net proceeds of the prepared food and beverage tax to the City of Charlotte. The net proceeds transferred to the City of Charlotte pursuant to this subdivision shall be applied in accordance with the following priorities. No application of any net proceeds to any class of the priorities set forth below in this subdivision shall be made until, with respect to each preceding class of priorities, either all payments for the current fiscal year have been provided in full or no such payments are required for the current fiscal year.
 - a. To provide for when due payments for the current fiscal year with respect to any financing for new convention center facilities or for the expansion of existing convention center facilities, which may include off-street parking for use in conjunction with the facilities.
 - b. To pay costs incurred in an aggregate amount not greater than one million five hundred thousand dollars (\$1,500,000) in each fiscal year for marketing and promoting new or expanded convention center facilities.
 - c. To pay other costs of acquiring, constructing, maintaining, operating, marketing, and promoting new or expanded convention center facilities.
- (3) Distribution to Other Municipalities. After deducting the amounts provided above, the local administrative authority shall determine the amount of the remaining occupancy tax net proceeds that were collected from taxable establishments located in each municipality, other than the City of Charlotte. The local administrative authority shall then distribute to each municipality, other than the City of Charlotte, an amount equal to one hundred twenty percent (120%) of the amount of the remaining occupancy tax net

proceeds collected in that municipality. These funds may be expended only for acquiring, constructing, financing, maintaining, operating, marketing, and promoting convention centers, civic centers, performing arts centers, coliseums, auditoriums, and museums, for off-street parking for use in conjunction with these facilities, and for tourism and tourism-related programs and activities including art and cultural programs, events, and festivals.

- (4) Distribution to Charlotte for Convention and Visitor Promotion. Of the occupancy tax net proceeds remaining after deducting the amounts provided in subsections (a)(1) and (a)(2) above, at least fifty percent (50%) of the first one million dollars (\$1,000,000) in each fiscal year, at least thirty-five percent (35%) of the second one million dollars (\$1,000,000) in each fiscal year, and at least twenty-five percent (25%) of the amount in excess of two million dollars (\$2,000,000) in each fiscal year shall be transferred by the local administrative authority to the City of Charlotte for activities and programs aiding and encouraging convention and visitor promotion. The City of Charlotte shall be acting as agent for each occupancy taxing entity.
- (5) Distribution of Remainder between Charlotte and Mecklenburg County. The amount of occupancy tax net proceeds remaining after deducting the amounts provided above shall be allocated by the local administrative authority between Mecklenburg County and the City of Charlotte using the following formula: the ratio of expenditures by each of Mecklenburg County and the City of Charlotte for acquiring, constructing, financing, maintaining, operating, marketing, and promoting convention centers, civic centers, performing arts centers, coliseums, auditoriums, and museums, for off-street parking for use in conjunction with these facilities, and for tourism and tourism-related programs and activities including art and cultural programs, events, and festivals to total expenditures by both Mecklenburg County and the City of Charlotte for such purposes. There shall be excluded from expenditures by the City of Charlotte for purposes of computing this ratio all expenditures for acquiring, constructing, financing, maintaining, operating, marketing, and promoting the new or expanded convention center facilities in the City of Charlotte for which net proceeds are allocated pursuant to subdivision (2) of this subsection. The ratio shall be computed annually on the basis of the prior fiscal year's

expenditures. However, no amount shall be allocated to Mecklenburg County if it has not levied an occupancy tax and a prepared food and beverage tax for the current period. These funds may be expended only for acquiring, constructing, financing, maintaining, operating, marketing, and promoting convention centers, civic centers, performing arts centers, coliseums, auditoriums, museums, for off-street parking for use in conjunction with these facilities, and for tourism and tourism-related programs and activities including art and cultural programs, events, and festivals.

(b) **Authority to Contract.** Mecklenburg County and each municipality located within Mecklenburg County may contract with any person, agency, association, or nonprofit corporation to undertake or carry out the activities and programs for which the proceeds may be expended. All contracts entered into pursuant to this subsection shall require an annual financial audit of any funds expended and a performance audit of contractual obligations."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1990.

H.B. 416

CHAPTER 822

AN ACT TO REQUIRE THAT HEADLIGHTS BE ILLUMINATED WHEN WINDSHIELD WIPERS ARE ON TO MAKE THAT VEHICLE MORE DISCERNIBLE DURING PERIODS OF LIMITED VISIBILITY AND TO REQUIRE MOTOR VEHICLES TO HAVE PROPERLY WORKING SPEEDOMETERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-129(a) reads as rewritten:

"(a) **When Vehicles Must Be Equipped.** -- Every vehicle upon a highway within this State shall be equipped with lighted headlamps and rear lamps as required for different classes of vehicles, and subject to exemption with reference to lights on parked vehicles as declared in G.S. 20-134:

- (1) During the period from sunset to sunrise,
- (2) When there is not sufficient light to render clearly discernible any person on the highway at a distance of 400 feet ahead, or
- (3) ~~When the lack of visibility through the windshield requires the windshield wipers to be activated and the vehicle is within a school zone during the regular school hours of the school year.~~

- (4) At any other time when windshield wipers are in use as a result of smoke, fog, rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street and highway at a distance of 500 feet ahead, provided, however, the provisions of this subdivision shall not apply to instances when windshield wipers are used intermittently in misting rain, sleet, or snow. Any person violating this subdivision during the period from October 1, 1990, through December 31, 1991, shall be given a warning of the violation only. Thereafter, any person violating this subdivision shall have committed an infraction and shall pay a fine of five dollars (\$5.00) and shall not be assessed court costs. No drivers license points, insurance points or premium surcharge shall be assessed on account of violation of this subdivision and no negligence or liability shall be assessed on or imputed to any party on account of a violation of this subdivision. The Commissioner of Motor Vehicles and the Superintendent of Public Instruction shall incorporate into driver education programs and driver licensing programs instruction designed to encourage compliance with this subdivision as an important means of reducing accidents by making vehicles more discernible during periods of limited visibility."

Sec. 2. Article 3 of Chapter 20 of the General Statutes is amended by adding the following new section to read:

" § 20-123.2 Speedometer.

(a) Every self-propelled motor vehicle when operated on the highway shall be equipped with a speedometer which shall be maintained in good working order.

(b) Any person violating this section shall have committed an infraction and may be ordered to pay a penalty of not more than twenty-five dollars (\$25.00). No drivers license points, insurance points or premium surcharge shall be assessed on or imputed to any party on account of a violation of this section."

Sec. 3. This act shall become effective October 1, 1990. Section 1 shall expire on June 30, 1991.

In the General Assembly read three times and ratified this the 28th day of June, 1990.

AN ACT TO CLARIFY THE MENTAL HEALTH LAW'S REFERENCES TO PERSONS DANGEROUS TO THEMSELVES AND OTHERS AND TO ADD A DEFINITION OF SEVERE AND PERSISTENT MENTAL ILLNESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-161(a) reads as rewritten:

"(a) Anyone who has knowledge of an individual who is: (i) mentally ill and either dangerous to himself or others ~~himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b.,~~ or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or (ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found."

Sec. 2. G.S. 122C-261(b) reads as rewritten:

"(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably (i) mentally ill and either dangerous to himself or others ~~himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b.,~~ or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or (ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., he shall issue an order to a law-enforcement officer or any other person authorized under G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist."

Sec. 3. G.S. 122C-263(c) reads as rewritten:

"(c) The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

- (1) Current and previous mental illness or mental retardation including, if available, previous treatment history;

- (2) Dangerousness to ~~himself or others as defined in G.S. 122C-3(11)~~ himself, as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-3(11)b.;
- (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and
- (4) Capacity to make an informed decision concerning treatment."

Sec. 4. G.S. 122C-163(d) reads as rewritten:

"(d) After the conclusion of the examination the physician or eligible psychologist shall make the following determinations:

- (1) If the physician or eligible psychologist finds that:
 - a. The respondent is mentally ill;
 - b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;
 - c. Based on the respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness as defined by G.S. 122C-3(11); and
 - d. His current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment;

The physician or eligible psychologist shall so show on [the] his examination report and shall recommend outpatient commitment. In addition the examining physician or eligible psychologist shall show the name, address, and telephone number of the proposed outpatient treatment physician or center. The person designated in the order to provide transportation shall return the respondent to his regular residence or to the home of a consenting individual, and he shall be released from custody.

- (2) If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to ~~himself or others~~, himself as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is mentally retarded, and because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b. he shall recommend inpatient commitment, and he shall so show on [the] his examination report. The law-enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a

district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for his care at a private 24-hour facility, the law-enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-157(a)(1)a for custody, observation, and treatment and immediately notify the clerk of superior court of his actions.

- (3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the respondent shall be released and the proceedings terminated."

Sec. 5. G.S. 122C-165(e) reads as rewritten:

"(e) If a respondent becomes dangerous to ~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., pending a district court hearing on outpatient commitment, new proceedings for involuntary inpatient commitment may be initiated."

Sec. 6. G.S. 122C-266(a) reads as rewritten:

"(a) Except as provided in subsections (b) and (c), within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a physician. The examination shall include but is not limited to the assessment specified in G.S. 122C-263(c).

- (1) If the physician finds that the respondent is mentally ill and is dangerous to ~~himself or others~~ himself, as defined by G.S. 122C-3(11)a., or others, as defined by G.S. 122C-3(11)b., or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., he shall hold the respondent at the facility pending the district court hearing.
- (2) If the physician finds that the respondent meets the criteria for outpatient commitment under G.S. 122C-263(d)(1), he shall show his findings on the physician's examination report, release the respondent pending the district court hearing, and notify the clerk of superior court of the county where the petition was initiated of his findings. In addition, the examining physician shall show on the examination report the name, address, and telephone number of the proposed outpatient treatment physician or center. He shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at that address at a specified date and time. The

examining physician before the appointment shall notify by telephone and shall send a copy of the notice and his examination report to the proposed outpatient treatment physician or center.

- (3) If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), he shall release the respondent and the proceedings shall be terminated.
- (4) If the respondent is released under subdivisions (2) or (3) of this subsection, the law-enforcement officer or other person designated to provide transportation shall return the respondent to the originating county."

Sec. 7. G.S. 122C-268(j) reads as rewritten:

"(j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to ~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to ~~others~~ others, as defined in G.S. 122C-3(11)b. The court shall record the facts that support its findings."

Sec. 8. G.S. 122C-271(b) reads as rewritten:

"(b) If the respondent has been held in a 24-hour facility pending the district court hearing, the court may make one of the following dispositions:

- (1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision voluntarily to seek or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the commitment order shall so show.
- (2) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill and is dangerous to

~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., it may order inpatient commitment at a 24-hour facility described in G.S. 122C-252 for a period not in excess of 90 days. However, an individual who is mentally retarded and, because of an accompanying behavior disorder, is dangerous to ~~others~~ others, as defined in G.S. 122C-3(11)b., may not be committed to a State, area or private facility for the mentally retarded. An individual who is mentally ill and dangerous to ~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., may also be committed to a combination of inpatient and outpatient commitment at both a 24-hour facility and an outpatient treatment physician or center for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the commitment order shall so show. If the court orders inpatient commitment for a respondent who is under an outpatient commitment order, the outpatient commitment is terminated; and the clerk of the superior court of the county where the district court hearing is held shall send a notice of the inpatient commitment to the clerk of superior court where the outpatient commitment was being supervised.

- (3) If the court does not find that the respondent meets either of the commitment criteria set out in subdivisions (1) and (2) of this subsection, the respondent shall be discharged, and the facility in which he was last a client so notified.
- (4) Before ordering any outpatient commitment, the court shall make findings of fact as to the availability of outpatient treatment. The court shall also show on the order the outpatient treatment physician or center who is to be responsible for the management and supervision of the respondent's outpatient commitment. When an outpatient commitment order is issued for a respondent held in a 24-hour facility, the court may order the respondent held at the facility for no more than 72 hours in order for the facility to notify the designated outpatient treatment physician or center of the treatment needs of the respondent. The clerk

of court in the county where the facility is located shall send a copy of the outpatient commitment order to the designated outpatient treatment physician or center. If the outpatient commitment will be supervised in a county other than the county where the commitment originated, the court shall order venue for further court proceedings to be transferred to the county where the outpatient commitment will be supervised. Upon an order changing venue, the clerk of superior court in the county where the commitment originated shall transfer the file to the clerk of superior court in the county where the outpatient commitment is to be supervised."

Sec. 9. G.S. 122C-273(a) reads as rewritten:

"(a) Unless prohibited by Chapter 90 of the General Statutes, if the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer, or the center may administer, to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards.

- (1) If the respondent fails to comply or clearly refuses to comply with all or part of the prescribed treatment, the physician, the physician's designee, or the center shall make all reasonable effort to solicit the respondent's compliance. These efforts shall be documented and reported to the court with a request for a supplemental hearing.
- (2) If the respondent fails to comply, but does not clearly refuse to comply, with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the physician, the physician's designee, or the center may request the court to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk shall issue an order to a law-enforcement officer to take the respondent into custody and to take him immediately to the designated outpatient treatment physician or center for examination. The law-enforcement officer shall turn the respondent over to the custody of the physician or center who shall conduct the examination and then release the respondent. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination. An examination conducted under this subsection in which a physician or eligible psychologist determines that the respondent meets the criteria for inpatient commitment may be substituted for the first examination required by G.S. 122C- 263 if the clerk or

magistrate issues a custody order within six hours after the examination was performed.

- (3) In no case may the respondent be physically forced to take medication or ~~forceably~~ forcibly detained for treatment unless he poses an immediate danger to himself or others. In such cases inpatient commitment proceedings shall be initiated.
- (4) At any time that the outpatient treatment physician or center finds that the respondent no longer meets the criteria set out in G.S. 122C-263(d)(1), the physician or center shall so notify the court and the case shall be terminated; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the designated outpatient treatment physician or center shall notify the clerk that discharge is recommended. The clerk shall calendar a supplemental hearing as provided in G.S. 122C-274 to determine whether the respondent meets the criteria for outpatient commitment.
- (5) Any individual who has knowledge that a respondent on outpatient commitment has become dangerous to ~~himself or others as defined by G.S. 122C-3(11)~~ himself, as defined by G.S. 122C-3(11)a., and others, as defined in G.S. 122C-3(11)b., may initiate a new petition for inpatient commitment as provided in this Part. If the respondent is committed as an inpatient, the outpatient commitment shall be terminated and notice sent by the clerk of court in the county where the respondent is committed as an inpatient to the clerk of court of the county where the outpatient commitment is being supervised."

Sec. 10. G.S. 122C-274(c) reads as rewritten:

"(c) In supplemental hearings for alleged noncompliance, the court shall determine whether the respondent has failed to comply and, if so, the causes for noncompliance. If the court determines that the respondent has failed or refused to comply it may:

- (1) Upon finding probable cause to believe that the respondent is mentally ill and dangerous to ~~himself or others~~, himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., order an examination by the same or different physician or eligible psychologist as provided in G.S. 122C-263(c) in order to determine the necessity for continued outpatient or inpatient commitment;

- (2) Reissue or change the outpatient commitment order in accordance with G.S. 122C-271; or
- (3) Discharge the respondent from the order and dismiss the case."

Sec. 11. G.S. 122C-3 is amended by inserting a new subdivision to read:

"(33a) 'Severe and persistent mental illness' means a mental disorder suffered by persons of 18 years of age or older that leads these persons to exhibit emotional or behavioral functioning that is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long term or indefinite duration. This disorder is a severe and persistent mental disability, resulting in a long-term limitation of functional capacities for the primary activities of daily living, such as interpersonal relations, homemaking, self-care, employment, and recreation."

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1990.

H.B. 2185

CHAPTER 824

AN ACT TO INCREASE THE BOND REQUIREMENTS FOR PROPRIETARY SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-95 reads as rewritten:

~~"§ 115D-95. Execution of bond required; filing and recording; actions upon bond.~~

~~(a) Before the State Board of Community Colleges shall issue such license the person, partnership, association of persons, or corporation shall execute a bond in the sum of one thousand dollars (\$1,000), signed by a solvent guaranty company authorized to do business in the State of North Carolina, or by two solvent individual sureties, payable to the State of North Carolina, and approved as to solvency by the clerk of the superior court of the county in which such school or branch school will be located and conduct its business, conditioned that the principal in said bond will carry out and comply with each and every contract, made and entered into by said school or branch school, acting by and through its officers and agents with any student who desires to enter such school or branch school and to take any courses offered therein and will pay back to such student all amounts collected in tuition and fees in case of failure on the part of the parties obtaining a license from the State Board of Community Colleges to open and conduct a business school, trade school or a correspondence~~

~~school, to comply with its contracts to give the instructions contracted for, and for full period evidenced by such contract. Such bond shall be filed with the clerk of the superior court of the county in which the school or branch school executing the bond is located, and shall be recorded by such clerk in a book provided for that purpose.~~

~~(b) The requirement herein specified for giving the aforesaid bond of one thousand dollars (\$1,000) shall apply to all business, trade or correspondence schools, or any branches thereof operating in North Carolina, and the State Board of Community Colleges shall not issue any license to any person, firm or corporation to operate any of the aforesaid schools until said bond has been given and notice of the approval of same by the clerk of the superior court has been filed with said Board of Community Colleges. Operator bonds of one thousand dollars (\$1,000) each shall be required for each branch of such business, trade, correspondence schools, or any branch thereof operated within the State by any person, partnership or corporation.~~

~~(c) In any and all cases where the party receiving the license from the State Board of Community Colleges fails to comply with any contract made and entered into with any student, or with the parents or guardian of said student, then the State of North Carolina upon the relation of said student, parent or guardian entering into the contract shall have a cause of action against the principal and sureties on the bonds herein provided for the full amount of payments made to such person, with six percent (6%) interest from the date of payment of said amount. For a violation of its contract with a student, or for other good cause, the State Board of Community Colleges is authorized to revoke the license issued to the offending school.~~

Bonds required.

(a) A guaranty bond is required for each school that is licensed to operate: Provided, however, a school that is unable to secure a bond may, with the consent of the State Board of Community Colleges, provide an alternative to a guaranty bond, as provided in subsection (c) of this section.

The State Board may revoke the license of a school that fails to maintain a bond or an alternative to a bond, pursuant to this section.

(b) (1) When application is made for a license or license renewal, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the school will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of

the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, foreclosure, or the school ceasing to operate.

- (2) The bond shall be in an amount determined by the State Board of Community Colleges to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for a school shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the school. The bond amount shall also be at least ten thousand dollars (\$10,000).

Each application for a license shall include a letter signed by an authorized representative of the school showing in detail the calculations made and the method of computing the amount of the bond, pursuant to this subdivision and the rules of the State Board. If the State Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the State Board may require the applicant to provide an additional bond.

- (3) The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the State Board of Community Colleges. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(c) An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the State Board of Community Colleges and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the State Board, an applicant may file with the clerk of the superior court of the county in which the school will be located, in lieu of a bond:

- (1) An assignment of a savings account in an amount equal to the bond required (i) which is in a form acceptable to the State Board of Community Colleges; (ii) which is executed by the applicant; and (iii) which is executed by a state or federal savings and loan association, state bank, or national bank, that is doing business in North Carolina and whose accounts are insured by a federal depositories

corporation; and (iv) for which access to the account in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section.

- (2) A certificate of deposit (i) which is executed by a state or federal savings and loan association, state bank, or national bank, which is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (ii) which is either payable to the State of North Carolina, unrestrictively endorsed to the State Board of Community Colleges; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the State Board of Community Colleges; or in the case of a nonnegotiable certificate of deposit, is assigned to the State Board of Community Colleges in a form satisfactory to the State Board; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section."

Sec. 2. G.S. 116-15 reads as rewritten:

"§ 116-15. *Licensing of certain nonpublic post-secondary educational institutions.*

The General Assembly of North Carolina in recognition of the importance of higher education and of the particular significance attached to the personal credentials accessible through higher education and in consonance with statutory law of this State making unlawful any 'unfair or deceptive acts or practices in the conduct of any trade or commerce,' hereby declares it the policy of this State that all institutions conducting post-secondary degree activity in this State that are not subject to Chapter 115 or 115D of the General Statutes, nor some other section of Chapter 116 of the General Statutes shall be subject to licensure under this section except as the institution or a particular activity of the institution may be exempt from licensure by one or another provision of this section.

(a) Definitions. -- As used in this section the following terms are defined as set forth in this subsection:

- (1) 'Post-secondary degree'. A credential conferring on the recipient thereof the title of 'Associate', 'Bachelor', 'Master', or 'Doctor', or an equivalent title, signifying educational attainment based on (i) study, (ii) a substitute for study in the form of equivalent experience or achievement testing, or (iii) a combination of the foregoing; provided, that 'post-secondary degree' shall not include any honorary degree or other so-called 'unearned' degree.

- (2) 'Institution'. Any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or university that engages in, purports to engage in, or intends to engage in any type of post-secondary degree activity.
- (3) 'Post-secondary degree activity'. Any of the following is 'post-secondary degree activity':
 - (i) Awarding a post-secondary degree.
 - (ii) Conducting or offering study, experience, or testing for an individual or certifying prior successful completion by an individual of study, experience, or testing, under the representation that the individual successfully completing the study, experience, or testing will be awarded therefor, at least in part, a post-secondary degree.
- (4) 'Publicly registered name'. The name of any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or institution that appears as the subject of any Articles of Incorporation, Articles of Amendment, or Certificate of Authority to Transact Business or to Conduct Affairs, properly filed with the Secretary of State of North Carolina and currently in force.
- (5) 'Board'. The Board of Governors of The University of North Carolina.

(b) Required License. -- No institution subject to this section shall undertake post-secondary degree activity in this State, whether through itself or through an agent, unless the institution is licensed as provided in this section to conduct post-secondary degree activity or is exempt from licensure under this section as hereinafter provided.

(c) Exemption from Licensure. -- Any institution that has been continuously conducting post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1972, shall be exempt from the provisions for licensure under this section upon presentation to the Board of information acceptable to the Board to substantiate such post-secondary degree activity and public registration of the institution's names. Any institution that, pursuant to a predecessor statute to this subsection, had presented to the Board proof of activity and registration such that the Board granted exemption from licensure, shall continue to enjoy such exemption without further action by the Board.

(d) Exemption of Institutions Relative to Religious Education. -- Notwithstanding any other provision of this section, no institution shall be subject to licensure under this section with respect to

post-secondary degree activity based upon a program of study, equivalent experience, or achievement testing the institutionally planned objective of which is the attainment of a degree in theology, divinity, or religious education or in any other program of study, equivalent experience, or achievement testing that is designed by the institution primarily for career preparation in a religious vocation. This exemption shall be extended to any institution with respect to each program of study, equivalent experience, and achievement test that the institution demonstrates to the satisfaction of the Board should be exempt under this subsection.

(e) Post-secondary Degree Activity within the Military. -- To the extent that an institution undertakes post-secondary degree activity on the premises of military posts or reservations located in this State for military personnel stationed on active duty there, or their dependents, the institution shall be exempt from the licensure requirements of this section.

(f) Standards for Licensure. -- To receive a license to conduct post-secondary degree activity in this State, an institution shall satisfy the Board that the institution has met the following standards:

- (1) That the institution is State-chartered. If chartered by a state or sovereignty other than North Carolina, the institution shall also obtain a Certificate of Authority to Transact Business or to Conduct Affairs in North Carolina issued by the Secretary of State of North Carolina;
- (2) That the institution has been conducting post-secondary degree activity in a state or sovereignty other than North Carolina during consecutive, regular-term, academic semesters, exclusive of summer sessions, for at least the two years immediately prior to submitting an application for licensure under this section, or has been conducting with enrolled students, for a like period in this State or some other state or sovereignty, post-secondary educational activity not related to a post-secondary degree; provided, that an institution may be temporarily relieved of this standard under the conditions set forth in subsection (i), below;
- (3) That the substance of each course or program of study, equivalent experience, or achievement test is such as may reasonably and adequately achieve the stated objective for which the study, experience, or test is offered or to be certified as successfully completed;
- (4) That the institution has adequate space, equipment, instructional materials, and personnel available to it to provide education of good quality;

- (5) That the education, experience, and other qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive, or will be reliably certified to have received, education consistent with the stated objectives of any course or program of study, equivalent experience, or achievement test offered by the institution;
- (6) That the institution provides students and other interested persons with a catalog or brochure containing information describing the substance, objectives, and duration of the study, equivalent experience, and achievement testing offered, a schedule of related tuition, fees, and all other necessary charges and expenses, cancellation and refund policies, and such other material facts concerning the institution and the program or course of study, equivalent experience, and achievement testing as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures that may be specified by the Board; and that such information is provided to prospective students prior to enrollment;
- (7) That upon satisfactory completion of study, equivalent experience, or achievement test, the student is given appropriate educational credentials by the institution, indicating that the relevant study, equivalent experience, or achievement testing has been satisfactorily completed by the students;
- (8) That records are maintained by the institution adequate to reflect the application of relevant performance or grading standards to each enrolled student;
- (9) That the institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations adopted pursuant thereto, relative to the safety and health of all persons upon the premises of the institution;
- (10) That the institution is financially sound and capable of fulfilling its commitments to ~~students~~; students and that the institution has provided a bond as provided in subsection (f1) of this section;
- (11) That the institution, through itself or those with whom it may contract, does not engage in promotion, sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair;
- (12) That the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, instructors, and

employees of the institution have no record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution;

- (13) That the student housing owned, maintained, or approved by the institution, if any, is appropriate, safe, and adequate;
- (14) That the institution has a fair and equitable cancellation and refund policy; and
- (15) That no person or agency with whom the institution contracts has a record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution.

(f1) (1) A guaranty bond is required for each institution that is licensed. The Board may revoke the license of an institution that fails to maintain a bond pursuant to this subsection.

If the institution has provided a bond pursuant to G.S. 115D-95, the Board may waive the bond requirement under this subsection. The Board may not waive the bond requirement under this subsection if the applicant has provided an alternative to a guaranty bond under G.S. 115D-95(c).

- (2) When application is made for a license or license renewal, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the institution will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the institution to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of an institution's license, bankruptcy, foreclosure, or the institution ceasing to operate.

The bond shall be in an amount determined by the Board to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for an institution shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the institution. The

bond amount shall also be at least ten thousand dollars (\$10,000).

Each application for a license shall include a letter signed by an authorized representative of the institution showing in detail the calculations made and the method of computing the amount of the bond, pursuant to this subdivision and the rules of the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(g) Review of Licensure. -- Any institution that acquires licensure under this section shall be subject to review by the Board to determine that the institution continues to meet the standard for licensure of subsection (f), above. Review of such licensure by the Board shall always occur if the institution is legally reconstituted, or if ownership of a preponderance of all the assets of the institution changes pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements, or if two years has elapsed since licensure of the institution was granted by the Board.

Notwithstanding the foregoing paragraph, if an institution has continued to be licensed under this section and continuously conducted post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1979, or for six consecutive years, whichever is the shorter period, and is accredited by an accrediting commission recognized by the Council on Post-Secondary Accreditation, such institution shall be subject to licensure review by the Board every six years to determine that the institution continues to meet the standard for licensure of subsection (f), above. However, should such an institution cease to maintain the specified accreditation, become legally reconstituted, have ownership of a preponderance of all its assets transferred pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements to a person or organization not licensed under this section, or fail to meet the standard for licensure of subsection (f), above, then the institution shall be subject to licensure review by the Board every two years until a license to conduct

post-secondary degree activity and the requisite accreditation have been restored for six consecutive years.

(h) Denial and Revocation of Licensure. -- Any institution seeking licensure under the provisions of this section that fails to meet the licensure requirements of this section shall be denied a license to conduct post-secondary degree activity in this State. Any institution holding a license to conduct post-secondary degree activity in this State that is found by the Board of Governors not to satisfy the licensure requirements of this section shall have its license to conduct post-secondary degree activity in this State revoked by the Board; provided, that the Board of Governors may continue in force the license of an institution deemed by the Board to be making substantial and expeditious progress toward remedying its licensure deficiencies.

(i) Regulatory Authority in the Board. -- The Board shall have authority to establish such rules, regulations, and procedures as it may deem necessary or appropriate to effect the provisions of this section. Such rules, regulations, and procedures may include provision for the granting of an interim permit to conduct post-secondary degree activity in this State to an institution seeking licensure but lacking the two-year period of activity prescribed by subsection (f)(2), above.

(j) Enforcement Authority in the Attorney General. -- The Board shall call to the attention of the Attorney General, for such action as he may deem appropriate, any institution failing to comply with the requirements of this section.

(k) Severability. -- The provisions of this section are severable, and, if any provision of this section is declared unconstitutional or invalid by the courts, such declaration shall not affect the validity of the section as a whole or any provision other than the provision so declared to be unconstitutional or invalid."

Sec. 3. G.S. 86A-22 reads as rewritten:

" § 86A-22. *Licensing and regulating barber schools and colleges.*

The North Carolina State Board of Barber Examiners may approve barber schools or colleges in the State, and may prescribe rules and regulations for their operation. No barber school or college shall be approved by the Board unless the school or college meets all of the following requirements:

- (1) Each school shall provide a course of instruction of at least 1528 hours.
- (2) Each school shall have at least two instructors. Each instructor must hold a valid instructor's certificate issued by the Board.
- (3) An application for a student's permit and a doctor's certificate, on forms prescribed by the Board, must be filed

with the Board before the student enters school. No student may enroll without having obtained a student's permit.

- (4) Each student enrolled shall be given a complete course of instruction on the following subjects: hair cutting; shaving; shampooing, and the application of creams and lotions; care and preparation of tools and implements; scientific massaging and manipulating the muscles of the scalp, face, and neck; sanitation and hygiene; shedding and regrowth of hair; elementary chemistry relating to sterilization and antiseptics; instruction on common skin and scalp diseases to the extent that they may be recognized; pharmacology as it relates to preparations commonly used in barbershops; instruction in the use of electrical appliances and the effects of the use of these on the human skin; structure of the skin and hair; nerve points of the face; the application of hair dyes and bleaches; permanent waving; marcelling or hair pressing; frosting and streaking; and the statutes and regulations relating to the practice of barbering in North Carolina. The Board shall specify the minimum number of hours of instruction for each subject required by this subsection.
- (5) Each school shall file an up-to-date list of its students with the Board at least once a month. If a student withdraws or transfers, the school shall file a report with the Board stating the courses and hours completed by the withdrawing or transferring student. The school shall also file with the Board a list of students who have completed the amount of work necessary to meet the licensing requirements.
- (6) Each school shall comply with the sanitary requirements of G.S. 86A-15.
- (7)
 - a. Each school shall provide a guaranty bond unless the school has already provided a bond or an alternative to a bond under G.S. 115D-95.
The North Carolina State Board of Barber Examiners may revoke the approval of a school that fails to maintain a bond or an alternative to a bond pursuant to this subdivision or G.S. 115D-95.
 - b. When application is made for approval or renewal of approval, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the school will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to

provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of a school's approval, bankruptcy, foreclosure, or the school ceasing to operate.

The bond shall be in an amount determined by the Board to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for a school shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the school. The bond amount shall also be at least ten thousand dollars (\$10,000).

Each application for approval shall include a letter signed by an authorized representative of the school showing in detail the calculations made and the method of computing the amount of the bond pursuant to this subpart and the rules of the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

- c. An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the Board and approval of one of the guaranty bond alternatives set forth in this subpart. With the approval of the Board, an applicant may file with the clerk of the superior court of the county in which the school will be located, in lieu of a bond:

1. An assignment of a savings account in an amount equal to the bond required (i) which is in a form acceptable to the Board; (ii) which is executed by the applicant; and (iii) which is executed by a state or federal savings and loan association, state bank, or national bank, that is doing business in North

Carolina and whose accounts are insured by a federal depositors corporation; and (iv) for which access to the account in favor of the State of North Carolina is subject to the same conditions as for a bond in subpart b. above.

2. A certificate of deposit (i) which is executed by a state or federal savings and loan association, state bank, or national bank, which is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (ii) which is either payable to the State of North Carolina, unrestrictively endorsed to the Board; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the Board; or in the case of a nonnegotiable certificate of deposit, is assigned to the Board in a form satisfactory to the Board; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subpart b. above."

Sec. 4. Chapter 88 of the General Statutes is amended by adding a new section to read:

" § 88-23.1. Bond required for cosmetic art schools.

(a) Each cosmetic art school shall provide a guaranty bond unless the school has already provided a bond or an alternative to a bond under G.S. 115D-95.

The Board of Cosmetic Art may refuse to renew or may suspend or revoke the approval of a school that fails to maintain a bond or an alternative to a bond pursuant to this section or G.S. 115D-95.

- (b) (1) When application is made for an approval or approval renewal, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the school will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including but not limited to the suspension, revocation, or nonrenewal of a school's approval, bankruptcy, foreclosure, or the school ceasing to operate.

- (2) The bond shall be in an amount determined by the Board of Cosmetic Art to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for a school shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the school. The bond amount shall also be at least ten thousand dollars (\$10,000).

Each application for a license shall include a letter signed by an authorized representative of the school showing in detail the calculations made and the method of computing the amount of the bond, pursuant to this subdivision and the rules of the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

- (3) The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the Board of Cosmetic Art. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(c) An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the Board of Cosmetic Art and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the Board, an applicant may file with the clerk of the superior court of the county in which the school will be located, in lieu of a bond:

- (1) An assignment of a savings account in an amount equal to the bond required (i) which is in a form acceptable to the Board of Cosmetic Art; (ii) which is executed by the applicant; and (iii) which is executed by a state or federal savings and loan association, state bank, or national bank, that is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (iv) for which access to the account in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section.

- (2) A certificate of deposit (i) which is executed by a state or federal savings and loan association, state bank, or national bank, which is doing business in North Carolina and whose accounts are insured by a federal depositors

corporation; and (ii) which is either payable to the State of North Carolina, unrestrictively endorsed to the Board of Cosmetic Art; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the Board of Cosmetic Art; or in the case of a nonnegotiable certificate of deposit, is assigned to the Board of Cosmetic Art in a form satisfactory to the Board; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section."

Sec. 5. G.S. 90-171.55 reads as rewritten:

" § 90-171.55. *Nurses Aides Registry.*

(a) The Board of Nursing, established pursuant to G.S. 90-171.21, shall establish a Nurses Aides Registry for persons functioning as nurses aides regardless of title. The Board shall consider those Level I nurses aides employed in State licensed or Medicare/Medicaid certified nursing facilities who meet applicable State and federal registry requirements as adopted by the North Carolina Medical Care Commission as having fulfilled the training and registry requirements of the Board, except for the fee requirements prescribed by this section. The Board may charge an annual fee of five dollars (\$5.00) for each registry applicant. The Board shall adopt rules to ensure that whenever possible, the fee is collected through the employer or prospective employer of the registry applicant. Fees collected may be used by the Board in administering the registry. The Board's authority granted by this Article shall not conflict with the authority of the Medical Care Commission.

(b) (1) Each nurses aide training program, except for those operated by (i) institutions under the Board of Governors of The University of North Carolina, (ii) institutions of the North Carolina Community College System, (iii) public high schools, and (iv) hospital authorities acting pursuant to G.S. 131E-23(31), shall provide a guaranty bond unless the program has already provided a bond or an alternative to a bond under G.S. 115D-95. The Board of Nursing may revoke the approval of a program that fails to maintain a bond or an alternative to a bond pursuant to this subsection or G.S. 115D-95.

(2) When application is made for approval or renewal of approval, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the program will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do

business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the program to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of a program's approval, bankruptcy, foreclosure, or the program ceasing to operate.

The bond shall be in an amount determined by the Board to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for a program shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the program. The bond amount shall also be at least ten thousand dollars (\$10,000).

Each application for a license shall include a letter signed by an authorized representative of the program showing in detail the calculations made and the method of computing the amount of the bond pursuant to this subdivision and the rules of the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(3) An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the Board and approval of one of the guaranty bond alternatives set forth in this subdivision. With the approval of the Board, an applicant may file with the clerk of the superior court of the county in which the program will be located, in lieu of a bond:

a. An assignment of a savings account in an amount equal to the bond required (i) which is in a form acceptable to the Board; (ii) which is executed by the applicant; and (iii) which is executed by a state or federal savings and loan association, state bank, or national bank, that is doing business in North

Carolina and whose accounts are insured by a federal depositors corporation; and (iv) for which access to the account in favor of the State of North Carolina is subject to the same conditions as for a bond in subdivision (2) of this subsection.

- b. A certificate of deposit (i) which is executed by a state or federal savings and loan association, state bank, or national bank, which is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (ii) which is either payable to the State of North Carolina, unrestrictively endorsed to the Board; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the Board; or in the case of a nonnegotiable certificate of deposit, is assigned to the Board in a form satisfactory to the Board; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subdivision (2) of this subsection."

Sec. 6. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 28th day of June, 1990.

H.B. 688

CHAPTER 825

AN ACT TO INCREASE THE PER DIEM ALLOWANCE FOR MEMBERS OF THE BOARD OF PHARMACY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.7 reads as rewritten:

"§ 90-85.7. *Board of Pharmacy; selection; vacancies; commission; term; ~~removal~~; per diem; removal.*

(a) The Board of Pharmacy shall consist of six persons. Five of the members shall be licensed as pharmacists within this State and shall be elected and commissioned by the Governor as hereinafter provided. Pharmacist members shall be chosen in an election held as hereinafter provided in which every person licensed to practice pharmacy in North Carolina and residing in North Carolina shall be entitled to vote. Each pharmacist member of said Board shall be elected for a term of three years and until his successor shall be elected and shall qualify. Members chosen by election under this section shall be elected upon the expiration of the respective terms of the members of the present Board of Pharmacy. No pharmacist shall be nominated for membership on said Board, or shall be elected to

membership on said Board, unless, at the time of such nomination, and at the time of such election, he is licensed to practice pharmacy in North Carolina. In case of death, resignation or removal from the State of any pharmacist member of said Board, the pharmacist members of the Board shall elect in his place a pharmacist who meets the criteria set forth in this section to fill the unexpired term.

One member of the Board shall be a person who is not a pharmacist and who represents the interest of the public at large. The Governor shall appoint this member.

All Board members serving on June 30, 1982, shall be eligible to complete their respective terms. No member appointed or elected to a term on or after July 1, 1982, shall serve more than two complete consecutive three-year terms. The Governor may remove any member appointed by him for good cause shown and may appoint persons to fill unexpired terms of members appointed by him.

It shall be the duty of a member of the Board of Pharmacy, within 10 days after receipt of notification of his appointment and commission, to appear before the clerk of the superior court of the county in which he resides and take and subscribe an oath to properly and faithfully discharge the duties of his office according to law.

(b) All nominations and elections of pharmacist members of the Board shall be conducted by the Board of Pharmacy, which is hereby constituted a Board of Pharmacy Elections. Every pharmacist with a current North Carolina license residing in this State shall be eligible to vote in all elections. The list of pharmacists shall constitute the registration list for elections. The Board of Pharmacy Elections is authorized to make rules and regulations relative to the conduct of these elections, provided such rules and regulations are not in conflict with the provisions of this section and provided that notice shall be given to all pharmacists residing in North Carolina. All such rules and regulations shall be adopted subject to the procedures of Chapter ~~150A~~ 150B of the General Statutes of North Carolina. From any decision of the Board of Pharmacy Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by Chapter ~~150A~~ 150B of the General Statutes.

(c) All rules, regulations, and bylaws of the North Carolina Board of Pharmacy so far as they are not inconsistent with the provisions of this Article, shall continue in effect.

(d) Notwithstanding G.S. 93B-5, Board members shall receive as compensation for their services per diem not to exceed one hundred dollars (\$100.00) for each day during which they are engaged in the official business of the Board."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 1030

CHAPTER 826

AN ACT TO AMEND THE STATUTES REGULATING BINGO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-309.5 reads as rewritten:

" § 14-309.5. *Bingo.*

(a) The purpose of the conduct of bingo is to insure a maximum availability of the net proceeds exclusively for application to the charitable, nonprofit causes and undertakings specified herein; that the only justification for this Part is to support such charitable, nonprofit causes; and such purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, prevent participation by criminal and other undesirable elements, and prevent the diversion of funds for the purpose herein authorized.

(b) It is lawful for an exempt organization to conduct bingo games in accordance with the provisions of this Part. Any licensed exempt organization who conducts a bingo game in violation of any provision of this Part shall be guilty of a misdemeanor under G.S. 14-292 and shall be punished in accordance with G.S. 14-3. Upon conviction such person shall not conduct a bingo game for a period of one year. It is lawful to participate in a bingo game conducted pursuant to this Part. It shall be a Class H felony for any person: (i) to operate a bingo game without a license; (ii) to operate a bingo game while license is revoked or suspended; (iii) to willfully misuse or misapply any moneys received in connection with any bingo game; or (iv) to contract with or provide consulting services to any licensee. It shall not constitute a violation of any State law to advertise a bingo game conducted in accordance with this Part."

Sec. 2. G.S. 14-309.14 reads as rewritten:

"Nothing in this Article shall apply to 'beach bingo' games except for the following subsections:

(a) No beach bingo game may offer a prize having a value greater than ten dollars (\$10.00). Any person offering a greater than ten-dollar (\$10.00) but less than fifty-dollar (\$50.00) prize is guilty of a misdemeanor. Any person offering a prize of fifty dollars (\$50.00) or greater is guilty of a Class H felony.

(a) (b) No beach bingo game may be held in conjunction with any other lawful bingo game, with any 'promotional bingo game', or with

any offering of an opportunity to obtain anything of ~~value by chance, value,~~ whether for valuable consideration or not. No beach bingo game may offer free bingo games as a promotion, for prizes or otherwise. Any person who violates this subsection is guilty of a Class H felony.

~~(b)~~ (c) G.S. 18B-308 shall apply to beach bingo games.

(d) Upon conviction under any provision of this section, such person shall not conduct a bingo game for a period of at least one year."

Sec. 3. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2050

CHAPTER 827

AN ACT TO COMPLY WITH TITLE XI OF THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989 BY GRANTING CERTAIN REGULATORY AUTHORITY TO THE NORTH CAROLINA REAL ESTATE COMMISSION REAL ESTATE APPRAISAL COMMITTEE, TO REDESIGNATE IT A BOARD, AND TO ADD A NEW CLASSIFICATION OF VOLUNTARY APPRAISER CERTIFICATION.

The General Assembly of North Carolina enacts:

PART I.

Section 1. G.S. 93A-72 reads as rewritten:

"§ 93A-72. *Definitions.*

When used in this Article, unless the context otherwise requires, the term:

- (1) 'Appraisal' or 'real estate appraisal' means an analysis, opinion or conclusion as to the value of identified real estate or specified interests therein.
- (2) 'Appraisal assignment' means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased appraisal.
- (3) 'Appraisal Foundation' or 'Foundation' means the Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.
- (4) 'Appraisal report' means any communication, written or oral, of an appraisal.

- (5) 'Certificate' means that document issued by the North Carolina Real Estate Commission evidencing that the person named therein has satisfied the requirements for certification as a State-certified real estate appraiser and bearing a certificate number assigned by the Commission.
- (6) 'Certificate holder' means a person certified by the Commission under the provisions of this Article.
- (7) 'Certified appraisal' means any appraisal performed by a State-certified real estate appraiser and represented as being 'certified'.
- (8) 'Certified appraisal report' means any communication, written or oral, of an appraisal by a State-certified real estate appraiser which is represented as being 'certified'.
- (9) 'Commission' means the North Carolina Real Estate Commission.
- (10) 'License' means that document issued by the North Carolina Real Estate Commission evidencing that the person named therein has satisfied the requirements for licensure as a State-licensed real estate appraiser and bearing a license number assigned by the Commission.
- (11) 'Licensee' means a person licensed by the Commission under the provisions of this Article.
- (12) 'Real estate' or 'real property' means land, including the air above and ground below and all appurtenances and improvements thereto, as well as any interest or right inherent in the ownership of land.
- (13) 'Real Estate Appraisal Committee', 'Appraisal Committee' or 'Committee' means the body established by the Commission pursuant to the provisions of this Article.
- (14) 'Real estate appraiser' or 'appraiser' means a person who for a fee or valuable consideration develops and communicates real estate appraisals or otherwise gives an opinion of the value of real estate or any interest therein.
- (15) 'Real estate appraising' means the practice of developing and communicating real estate appraisals.
- (16) 'Residential real estate' means any parcel of real estate, improved or unimproved, that is exclusively residential in nature and that includes or is intended to include a residential structure containing not more than four dwelling units and no other improvements except those which are typical residential improvements that support the residential use for the location and property type. A residential unit in a condominium, townhouse, or

cooperative complex or a planned unit development is considered to be residential real estate.

- (16a) 'State-certified general real estate appraiser' means a person who holds a current, valid certificate as a State-certified general real estate appraiser issued under the provisions of this Article.
- (17) 'State-certified residential real estate appraiser' means a person who holds a current, valid certificate as a State-certified residential real estate appraiser issued under the provisions of this Article.
- (18) 'State-licensed residential real estate appraiser' means a person who holds a current, valid license as a State-licensed residential real estate appraiser issued under the provisions of this Article."

Sec. 2. G.S. 93A-73 reads as rewritten:

"§ 93A-73. *Qualifications for State licensure and certification; applications; application fees; examinations.*

(a) Any person desiring to obtain licensure as a State-licensed real estate appraiser or certification as a State-certified real estate appraiser shall make written application to the Commission on such forms as are prescribed by the Commission setting forth the applicant's qualifications for licensure or certification. Each applicant shall satisfy the following qualification requirements:

- (1) Each applicant for licensure as a State-licensed residential real estate appraiser shall have demonstrated to the satisfaction of the Commission that he possesses the knowledge and competence necessary to perform appraisals of residential and other real estate as the Commission may prescribe by having satisfactorily completed, within the five-year period immediately preceding the date application is made, through a school approved by the Commission, a course of instruction in real estate appraisal principles and practices consisting of at least 90 hours of classroom instruction in subjects determined by the Commission, and shall satisfy such additional qualifications as may be required to render North Carolina State-licensed residential real estate appraisers eligible to perform appraisals in connection with federally-related transactions requiring the use of a State-licensed residential real estate appraiser; or the applicant shall possess education or experience which is found by the Commission to be equivalent to the above requirements.
- (1b) Each applicant for certification as a State-certified residential real estate appraiser shall have demonstrated to

the satisfaction of the Commission that he possesses the knowledge and competence necessary to perform appraisals of residential and other real estate as the Commission may prescribe by having satisfied all education requirements for licensure as a State-licensed residential real estate appraiser; shall present evidence satisfactory to the Commission of at least two years of full-time experience in real estate appraising within the five-year period immediately preceding the date application is made; and shall satisfy such additional qualifications criteria as may be promulgated by the Appraiser Qualifications Board of The Appraisal Foundation for residential real estate appraisers.

- (2) Each applicant for certification as a State-certified general real estate appraiser shall have demonstrated to the satisfaction of the Commission that he possesses the knowledge and competence necessary to perform appraisals of all types of real estate by having satisfactorily completed, within the five-year period immediately preceding the date application is made, through a school approved by the Commission, a course of instruction in general real estate appraisal practices consisting of at least 90 hours of classroom instruction in subjects determined by the Commission, such course of instruction to be in addition to the education required for licensure as a State-licensed ~~residential real estate appraiser, appraiser; and shall present evidence satisfactory to the Commission of at least two years of full-time experience in real estate appraising within the five-year period immediately preceding the date application is made, made; and shall satisfy such additional qualifications criteria as may be required to render North Carolina State-certified real estate appraisers eligible to perform appraisals in connection with federally related transactions requiring the use of a State-certified real estate appraiser;~~ promulgated by the Appraiser Qualifications Board of The Appraisal Foundation for general real estate appraisers; or the applicant shall possess education or experience which is found by the Commission to be equivalent to the above requirements.

(b) Each application for State licensure or certification as a real estate appraiser shall be accompanied by a fee fixed by the Commission but not to exceed one hundred fifty dollars (\$150.00).

(c) Any person who files with the Commission an application for State licensure or certification as a real estate appraiser shall be required to ~~take pass an oral or written~~ examination to demonstrate his

competence. The Commission may also make such investigation as it deems necessary into the ethical background of the applicant to determine his qualifications with due regard to the paramount interests of the public as to his honesty, truthfulness and integrity. If the results of the examination and investigation shall be satisfactory to the Commission, then the Commission shall issue to ~~such person the applicant~~ a license or certificate authorizing ~~such person the applicant~~ to act as a State-licensed real estate appraiser or a State-certified real estate appraiser in this State."

Sec. 3. G.S. 93A-78(b) reads as rewritten:

"(b) The Committee shall advise the Commission on the implementation and operation of this Article and any other applicable provisions of this Chapter relating to standards and operations of real estate appraiser education programs. The Committee shall propose to the Commission for its adoption rules to implement, administer, and enforce this Article and any other applicable provisions of this Chapter relating to standards and operations of real estate appraiser education programs. In proposing rules to the Commission regarding the qualification requirements and standards of practice for State-licensed and State-certified real estate appraisers, the Committee shall consider ~~the Minimum Standards of Qualification~~ qualifications criteria issued by the Appraiser Qualification Board of the Appraisal Foundation and the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation."

Sec. 4. G.S. 93A-71.1 and Chapter 630 of the 1989 Session Laws are repealed.

PART II.

Sec. 5. G.S. 93A-72(13) reads as rewritten:

"§ 93A-72. *Definitions.*

When used in this Article, unless the context otherwise requires, the term:

- (13) '~~Real Estate Appraisal Committee Board~~', '~~Appraisal Committee Board~~' or '~~Committee Board~~' means the body established by ~~the Commission pursuant to the provisions of this Article.~~ G.S. 93A-78.

Sec. 6. G.S. 93A-73, as amended by Part I of this act, reads as rewritten:

"§ 93A-73. *Qualifications for State licensure and certification; applications; application fees; examinations.*

(a) Any person desiring to obtain licensure as a State-licensed real estate appraiser or certification as a State-certified real estate appraiser shall make written application to the Commission on such forms as are

prescribed by the Commission setting forth the applicant's qualifications for licensure or certification. Each applicant shall satisfy the following qualification requirements:

- (1) Each applicant for licensure as a State-licensed residential real estate appraiser shall have demonstrated to the satisfaction of the Commission Real Estate Appraisal Board that he possesses the knowledge and competence necessary to perform appraisals of residential and other real estate as the Commission may prescribe by having satisfactorily completed, within the five-year period immediately preceding the date application is made, through a school approved by the Commission, a course of instruction in real estate appraisal principles and practices consisting of at least 90 hours of classroom instruction in subjects determined by the Commission, Appraisal Board; and shall satisfy such additional qualifications as may be required to render North Carolina State-licensed residential real estate appraisers eligible to perform appraisals in connection with federally-related transactions requiring the use of a State-licensed residential real estate appraiser; or ~~the applicant~~ shall possess education or experience which is found by the Commission Appraisal Board to be equivalent to the above requirements.
- (1b) Each applicant for certification as a State-certified residential real estate appraiser shall have demonstrated to the satisfaction of the Commission Real Estate Appraisal Board that he possesses the knowledge and competence necessary to perform appraisals of residential and other real estate as the Commission may prescribe by having satisfied all education requirements for licensure as a State-licensed residential real estate appraiser; shall present evidence satisfactory to the Commission Appraisal Board of at least two years of full-time experience in real estate appraising within the five-year period immediately preceding the date application is made; and shall satisfy such additional qualifications criteria as may be promulgated by the Appraiser Qualifications Board of The Appraisal Foundation for residential real estate appraisers.
- (2) Each applicant for certification as a State-certified general real estate appraiser shall have demonstrated to the satisfaction of the Commission Real Estate Appraisal Board that he possesses the knowledge and competence necessary to perform appraisals of all types of real estate by having satisfactorily completed, within the five-year period

immediately preceding the date application is made, through a school approved by the Commission, a course of instruction in general real estate appraisal practices consisting of at least 90 hours of classroom instruction in subjects determined by the ~~Commission~~, Appraisal Board, such course of instruction to be in addition to the education required for licensure as a State-licensed residential real estate appraiser; shall present evidence satisfactory to the ~~Commission~~ Appraisal Board of at least two years of full-time experience in real estate appraising within the five-year period immediately preceding the date application is made; and shall satisfy such additional qualifications criteria as may be promulgated by the Appraiser Qualifications Board of The Appraisal Foundation for general real estate appraisers; or the applicant shall possess education or experience which is found by the ~~Commission~~ Appraisal Board to be equivalent to the above requirements.

(b) Each application for State licensure or certification as a real estate appraiser shall be accompanied by a fee fixed by the Commission but not to exceed one hundred fifty dollars (\$150.00).

(c) Any person who files with the Commission an application for State licensure or certification as a real estate appraiser shall be required to pass an examination to demonstrate his competence. The Commission ~~may~~ shall also make such investigation as ~~it deems~~ deemed necessary by the Real Estate Appraisal Board into the ethical background of the applicant to determine his qualifications with due regard to the paramount interests of the public as to his honesty, truthfulness and integrity. If the results of the ~~examination and~~ investigation shall be satisfactory to the ~~Commission~~, Board and the applicant is otherwise qualified, then the Commission shall issue to the applicant a license or certificate authorizing the applicant to act as a State-licensed real estate appraiser or a State-certified real estate appraiser in this State. If, based upon the results of the investigation, the moral character of the applicant is in question, action on the application will be deferred pending a hearing before the Appraisal Board."

Sec. 7. G.S. 93A-74(b) reads as rewritten:

"(b) The Commission may by rule require, as a prerequisite to license or certificate renewal, the completion of Commission-approved education courses approved by the Commission in subject matters determined by the Appraisal Board, or courses determined by the Commission to be equivalent to such instruction, provided that the continuing education requirements do not exceed 24 hours of classroom instruction during any two-year period, except as may be

required to maintain State-certified and State-licensed real estate appraisers' eligibility to perform real estate appraisals in connection with federally-related transactions requiring their use."

Sec. 8. G.S. 93A-78, as amended by Part I of this act, reads as rewritten:

"§ 93A-78. *Real Estate Appraisal Committee, Board.*

(a) ~~The Commission shall appoint~~ There is created a Real Estate Appraisal Committee Board for the purpose of rendering advice and assistance to the Commission, Commission and for the other purposes set forth in this Article. To the extent possible, the membership of the Committee Board shall be representative of the members of the real estate appraisal business. The Committee Board shall consist of five members, seven members. The Governor shall appoint five members of the Board. The General Assembly shall appoint two members in accordance with G.S. 120-121, one upon recommendation of the President Pro Tempore of the Senate, and one upon recommendation of the Speaker of the House of Representatives, three of whom. The appointee recommended by the Speaker of the House of Representatives, and at least four of the appointees of the Governor shall be persons who have been engaged in the business of real estate appraising in this State for not less than at least five years immediately preceding their appointment, and, if appointed to the Committee after January 1, 1991, shall also be appointment and are also State-licensed or State-certified real estate appraisers. The appointee recommended by the President Pro Tempore of the Senate and at least one of the appointees of the Governor shall be persons who are not involved directly or indirectly in the real estate, real estate appraisal, or real estate lending industry. Members of the Committee Board shall serve three-year terms, so staggered that the term of one member expires in one year, the terms of two members expire in the next year, and the terms of two members expire in the third year of each three-year period. The members of the Committee Board shall elect one of their members to serve as chairman of the Committee for a term of one year. The Commission Governor may remove any member of the Committee Board appointed by him for misconduct, incompetency, or neglect of duty. The Commission shall have the power to fill all Successors shall be appointed by the appointing authority making the original appointment. All vacancies occurring on the Committee. Board shall be filled, for the unexpired term, by the appointing authority making the original appointment. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(b) ~~The Committee Board~~ shall advise the Commission on the implementation and operation of this Article and any other applicable

provisions of this Chapter relating to standards and operations of real estate appraiser education programs. The ~~Committee~~ Board shall propose to the Commission for its adoption rules to implement, administer, and enforce this Article and any other applicable provisions of this Chapter relating to standards and operations of real estate appraiser education programs. In proposing rules to the Commission regarding the qualification requirements and standards of practice for State-licensed and State-certified real estate appraisers, the ~~Committee~~ Board shall consider the qualifications criteria issued by the Appraiser Qualification Board of the Appraisal Foundation and the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(b1) The Board is an occupational licensing agency governed by Chapter 150B; its decisions are final agency decisions subject to judicial review under Article 4 of Chapter 150B.

(c) Members of the ~~Committee~~ Board shall be paid ~~the~~ per diem allowances at the rates set forth in G.S. 93B-5; provided that none of the expenses of the ~~Committee~~ Board shall be payable out of the Treasury of the State of North Carolina."

Sec. 9. G.S. 93A-79(d) reads as rewritten:

"(d) All fees collected by the Commission under this Article shall be deposited into the operating account of the Commission. None of the expenses incurred by the Commission in administering this Article, including the compensation of expenses of the Real Estate Appraisal ~~Committee~~ Board or any officer or employee of the Commission, may be paid or payable out of the Treasury of the State of North Carolina, and the Real Estate Appraisal ~~Committee~~ Board may not make or incur any expense, debt or other financial obligation binding upon the Commission or the State of North Carolina."

Sec. 10. G.S. 93A-80 reads as rewritten:

"§ 93A-80. *Disciplinary action by Commission.*

(a) The Commission ~~may~~ shall take disciplinary action against State-licensed or State-certified real estate ~~appraisers~~, appraisers, only as directed by the Real Estate Appraisal Board. Upon its own motion, the motion of the Appraisal Board, or on the verified complaint of any person, the Commission may investigate the actions of any person licensed or certified under this Article or any other person who shall assume to act in such capacity. If the ~~Commission~~ Appraisal Board finds probable cause that a person licensed or certified under this Article has violated any of the provisions of this Chapter, the ~~Commission~~ Appraisal Board may hold a hearing on the allegations of misconduct.

The Commission Appraisal Board shall have the power to direct the Commission to suspend or revoke at any time the licensure license or

certification ~~privileges~~ granted to any person under the provisions of this Article or to reprimand or censure any licensee or certificate holder if, following a hearing, the ~~Commission~~ Appraisal Board finds the licensee or certificate holder to have:

- (1) Procured licensure or certification pursuant to this Article by making a false or fraudulent representation;
- (2) Made any willful or negligent misrepresentation or any willful or negligent omission of material fact;
- (3) Accepted an appraisal assignment when the employment is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or when the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached or upon consequences resulting from the appraisal assignment;
- (4) Acted or held oneself out as a State-licensed or State-certified real estate appraiser when not so licensed or certified;
- (5) Failed as a State-licensed or State-certified real estate appraiser to actively and personally supervise any person not licensed or certified under this Article who assists the State-licensed or State-certified real estate appraiser in performing real estate appraisals;
- (6) Failed to retain for three years and to make available to the Commission for its inspection without prior notice, originals or true copies of all written contracts engaging his services to appraise real property, and all reports and supporting data assembled and formulated by the appraiser in preparing the reports;
- (7) Paid a fee or valuable consideration to any person for acts or services performed in violation of this Article;
- (8) Acted as a real estate appraiser in such an unworthy or incompetent manner as to endanger the interest of the public;
- (9) Violated any of the standards for the development or communication of real estate appraisals or any other rule promulgated by the Commission;
- (10) Performed any other act which constitutes improper, fraudulent, or dishonest conduct; or
- (11) Violated any of the provisions of this Chapter.

(b) Following a hearing, the ~~Commission~~ Appraisal Board shall also have power to direct the Commission to suspend or revoke any license or certificate issued under the provisions of this Article or to reprimand or censure any licensee or certificate holder when:

- (1) The licensee or certificate holder has been convicted of, or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, to an offense involving moral turpitude which would reasonably affect the performance of the licensee or certificate holder in the real estate appraisal business; or
- (2) A final civil judgment has been entered against the licensee or certificate holder on grounds of fraud, misrepresentation or deceit in the making of any appraisal of real estate.

(c) When a person licensed or certified under this Article is accused of any act, omission, or misconduct which would subject him to disciplinary action, the licensee or certificate holder, with the consent and approval of the ~~Commission~~, Appraisal Board, may surrender his license or certificate and all the rights and privileges pertaining to it for a period of time established by the ~~Commission~~, Appraisal Board. A person who surrenders his license or certificate shall not thereafter be eligible for or submit any application for licensure or certification as a real estate appraiser during the period that the license or certificate is surrendered."

Sec. 11. G.S. 93A-81(b) reads as rewritten:

"(b) The Commission ~~may~~ may, on its own motion or at the request of the Real Estate Appraisal Board, appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Article or rules promulgated by the Commission. The superior court shall have the power to grant these injunctions whether or not criminal prosecution has been or may be instituted as a result of the violations, and whether or not the person is the holder of a license or certificate issued by the Commission under this Article."

Sec. 12. Article 6 of Chapter 146 of the General Statutes is amended by adding a new section to read:

" § 146-22.2. Appraisal of property to be acquired by State.

Where an appraisal of real estate or an interest in real estate is required by law to be made before acquisition of the property by the State or an agency of the State, the appraisal shall be made by a real estate appraiser licensed or certified by the State under Article 5 of Chapter 93A of the General Statutes."

Sec. 13. Notwithstanding the provisions of G.S. 93A-78, the terms of all members of the Real Estate Appraisal Committee shall continue to and shall expire on July 1, 1991. Effective for terms to begin July 1, 1991, the new members of the newly designated Real Estate Appraisal Board shall be appointed as provided in G.S. 93A-78, as amended by this act. Notwithstanding the provisions of G.S. 93A-

78, the terms beginning July 1, 1991, shall be staggered as follows: the appointee recommended by the President Pro Tempore shall serve for two years; and three of the appointees of the Governor shall serve for three years; and the appointee recommended by the Speaker of the House of Representatives and the remaining appointees of the Governor shall serve for four years. When the term of a member beginning July 1, 1991, expires, the next term of that member shall be a three-year term as provided in G.S. 93A-78, as amended by this act.

Sec. 14. G.S. 120-123 is amended by adding at the end a new subdivision to read:

"(58) The Real Estate Appraisal Board of the Real Estate Commission created in G.S. 93A-78."

Sec. 15. Part I and Sections 13 and 15 of this act are effective upon ratification. The remainder of this act shall become effective July 1, 1991.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2054

CHAPTER 828

AN ACT TO ALLOW THE MAYOR OF THE CITY OF WHITEVILLE TO VOTE ON ALL ISSUES COMING BEFORE THE COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. Section 2.3 of the Charter of the City of Whiteville, being Chapter 1018, Session Laws of 1987, reads as rewritten:

"Sec. 2.3. *Mayor; Term of Office; Duties.* The Mayor is elected by all the qualified voters of the City for a term of two years; is the official head of the City government and presides at meetings of the Council; shall have the ~~right to vote only when there is an equal division on a question or matter before the council~~ power to vote on all questions or matters coming before the Council, but shall not have the power to vote again in instances where there is an equal division on a question or matter; and shall exercise the powers and duties conferred by law or as directed by the Council."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2061

CHAPTER 829

AN ACT ENABLING THE TOWN OF EDENTON TO PASS ORDINANCES REQUIRING THAT CERTAIN RESIDENTIAL DWELLING UNITS HAVE AUTOMATIC SMOKE DETECTORS.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 226, Session Laws of 1987, reads as rewritten:

"Sec. 2. This act shall apply only to the Towns of Boone, Edenton, and Blowing Rock."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2116

CHAPTER 830

AN ACT TO PROVIDE THAT THE ADDITIONAL TAX ON MOTORCYCLES IS TO BE USED FOR THE MOTORCYCLE SAFETY INSTRUCTION PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-87(6) reads as rewritten:

"(6) Private Motorcycles. -- The base tax on private passenger motorcycles shall be nine dollars (\$9.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base tax shall be sixteen dollars (\$16.00). ~~A~~ An additional tax of three dollars (\$3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base tax. The revenue from the additional tax shall be deposited in the General Fund, credited to the General Fund and may be used to implement the Motorcycle Safety Instruction Program created in G.S. 115D-72."

Sec. 2. This act shall become effective June 30, 1990, and shall expire October 1, 1993.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2134

CHAPTER 831

AN ACT TO AUTHORIZE THE CITY OF BURLINGTON TO CONVEY A TRACT OF LAND TO HABITAT FOR HUMANITY, AT PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Burlington may convey at private sale with monetary consideration to Habitat for Humanity of Alamance County, N. C., Inc., any or all of its right, title, and interest to the following described property:

A certain tract or parcel of land in Burlington Township, Alamance County, North Carolina, adjoining the lands of Fisher Street, North Ireland Street, Henry C. Harris, Thomas R. Fuller and others and being more particularly described as follows:

BEGINNING at an iron stake in the south right-of-way line of Fisher Street, said stake being a corner with Thomas R. Fuller lying North 55 deg. 30' East 16.0 feet from the intersection of the east right-of-way line of Vance Street and the South right-of-way line of Fisher Street and running thence from said beginning point with the South right-of-way line of Fisher Street, North 55 deg. 41' East 88.79 feet to a point of curvature; thence along a curve to the right having a radius of 1112.92 feet, an arc length of 378.05 feet and a chord of North 65 deg. 24' 53" East 376.23 feet to a concrete right-of-way monument at the intersection of the South right-of-way line of Fisher Street with the West right-of-way line of North Ireland Street; thence with the west right-of-way of North Ireland Street, South 04 deg. 32' 29" West 169.63 feet to an iron stake, a corner with Henry C. Harris; thence with the line of Henry C. Harris, North 85 deg. 00' West 35.5 feet to a rock corner with Henry C. Harris; thence again with Henry C. Harris and continuing with Thomas R. Fuller, South 83 deg. 41' West 368.90 feet to the BEGINNING and containing 39,299 Square Feet and being as shown on City of Burlington Engineering Department Drawing No. 3167-90 entitled Property of City of Burlington, dated January 25, 1990.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2135

CHAPTER 832

AN ACT TO AUTHORIZE THE CITY OF BURLINGTON TO CONVEY A TRACT OF LAND TO RALPH SCOTT GROUP HOMES, INC., AT PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Burlington may convey at private sale with monetary consideration to Ralph Scott Group Homes, Inc., any or all of its right, title, and interest to the following described property:

A certain tract or parcel of land in Burlington Township, Alamance County, adjoining the lands of Fisher Street, Hall Avenue and Trade Street and being more particularly described as follows:

BEGINNING at an iron stake at the intersection of the west right-of-way line of Trade Street and the north right-of-way line of Fisher Street and running thence from said beginning point with the line of Fisher Street, South 53 deg. 23' 38" West 376.14 feet to an iron stake in the east right-of-way line of Hall Avenue; thence with the east right-of-way line of Hall Avenue, North 02 deg. 31' 12" East 394.38 feet to an iron stake in the west right-of-way line of Trade Street; thence with the west right-of-way line of Trade Street, South 87 deg. 39' 48" East 9.31 feet to a point of curvature; thence along a curve to the right having a radius of 323.76 feet, an arc length of 290.07 feet and a chord of South 61 deg. 59' 48" East 280.46 feet to a point of tangency; thence South 36 deg. 19' 48" East 46.73 feet to the BEGINNING and containing 1.542 Acres, and being as shown on City of Burlington Engineering Department Drawing No. 2345-76.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2161

CHAPTER 833

AN ACT TO AUTHORIZE THE CITY OF OXFORD, NORTH CAROLINA, TO DISPOSE OF PROPERTY BY PRIVATE SALE IN CONNECTION WITH LEASE-PURCHASE ARRANGEMENTS FOR CONVERTING THE D.N. HIX SCHOOL COMPLEX INTO A CITY HALL AND FIRE HOUSE, AND TO ALLOW MCDOWELL COUNTY TO RECONVEY PROPERTY IT OBTAINED WITHOUT MONETARY CONSIDERATION BECAUSE SUCH PROPERTY IS NOT NEEDED FOR THE PURPOSE IT WAS ACQUIRED.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Oxford in Granville County may convey at private sale the following described property or portions thereof, or more lease-purchase arrangements for conversion of, and expansion to existing buildings to house a City Hall and Fire Department:

Lying and being in the City of Oxford, a tract of land containing 12.5 acres more or less, and known as the D.N. Hix School Complex bounded on the east by Cooper Avenue, on the north by Williamsboro Street, on the west by Belle Street, on the south by Spring Street; the same comprising the entire block so bounded with the exception of one lot on the south west corner of the said block, which same is in the ownership of James E. Bullock and wife Carolyn H. Bullock which said excepted property is described by deed of record in Book 192, page 432 in the Granville County Registry.

Sec. 2. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the County of McDowell may convey to Great Meadows, Inc., at private sale, with or without monetary consideration, any or all of its right, title, and interest to the property conveyed by Great Meadows, Inc., to the County of McDowell by deed dated January 13, 1987, and recorded in Book 407, Page 416, McDowell County Registry.

Sec. 3. Section 1 of this act is effective on the latter of ratification or July 1, 1990. Section 2 of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2208

CHAPTER 834

AN ACT TO PROVIDE THAT IT IS UNLAWFUL TO REQUEST
AMBULANCE SERVICE IN CLEVELAND COUNTY WHEN
THAT SERVICE IS NOT NEEDED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-111.3 reads as rewritten:

" § 14-111.3. *Making unneeded ambulance request in certain counties.*

It shall be unlawful for any person or persons to willfully obtain or attempt to obtain ambulance service that is not needed, or to make a false request or report that an ambulance is needed. Every person convicted of violating this section shall upon conviction be punished by a fine of fifty dollars (\$50.00) or imprisonment not to exceed 30 days or both such fine and imprisonment.

This section shall apply only to the Counties of Ashe, Buncombe, Cherokee, Clay, Cleveland, Davie, Duplin, Greene, Haywood, Hoke, Macon, Madison, Robeson, Washington, Wilkes and Yadkin."

Sec. 2. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

S.B. 1346

CHAPTER 835**AN ACT TO REDUCE THE TERMS OF CHARLOTTE HOUSING AUTHORITY COMMISSIONERS FROM FIVE YEARS TO THREE YEARS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 157-5 reads as rewritten:

"§ 157-5. *Appointment, qualifications and tenure of commissioners.*

An authority shall consist of not less than five nor more than nine commissioners appointed by the mayor and he shall designate the first chairman. Notwithstanding G.S. 157-7, 14-234, or any other provision of law, no person shall be barred from serving as a commissioner of any housing authority created under this Chapter because such person is a tenant of the authority or a recipient of housing assistance through any program operated by the authority; provided, that no such commissioner shall be qualified to vote on matters affecting his official conduct or matters affecting his own individual tenancy, as distinguished from matters affecting tenants in general; and further provided, that no more than one third of the members of any housing authority commission shall be tenants of the authority or recipients of housing assistance through any program operated by the authority. Avery, Beaufort, Bertie, Burke, Caldwell, Camden, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Graham, Halifax, Haywood, Henderson, Hertford, Hoke, Hyde, Jackson, Jones, Lenoir, Macon, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Pitt, Polk, Robeson, Rowan, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson and Yadkin Counties are exempted from any provision of law allowing a person who is a tenant of the authority to serve as a commissioner of a housing authority. The council may at any time by resolution or ordinance increase or decrease the membership of an authority, within the limitations herein prescribed.

The mayor shall designate overlapping terms of not less than one nor more than five years for the commissioners first appointed. Thereafter, the term of office shall be ~~five~~ three years. A

commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper."

Sec. 2. This act applies to the City of Charlotte only.

Sec. 3. This act is effective upon ratification and applies to terms of office commencing on or after that date.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

S.B. 1371

CHAPTER 836

AN ACT TO ALLOW HENDERSON COUNTY TO NAME
PRIVATE ROADS IN UNINCORPORATED AREAS.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 1319 of the 1979 Session Laws, as amended by Chapter 568 of the 1981 Session Laws, as rewritten by Chapter 98 of the 1983 Session Laws, and as further amended by Chapter 299 of the 1983 Session Laws, and as further amended by Chapter 900 of the 1987 Session Laws, and as further amended by Chapter 906 of the 1987 Session Laws, and as further amended by Chapter 335 of the 1989 Session Laws, reads as rewritten:

"Sec. 3. This act applies only to Brunswick, Cabarrus, Cleveland, Avery, Stokes, Surry, Alamance, New Hanover, Henderson, and McDowell Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2065

CHAPTER 837

AN ACT TO REPEAL THE PROHIBITION ON BEAR HUNTING IN DARE COUNTY AND TO AUTHORIZE THE ESTABLISHMENT OF SEASONS FOR HUNTING BLACK BEARS IN DARE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 258 of the 1973 Session Laws and Chapter 582 of the 1979 Session Laws are repealed as they apply to Dare County.

Sec. 2. G.S. 113-133.1(e) is amended by deleting the language, "Session Laws 1973, Chapter 258;" and "Session Laws 1979, Chapter 582" in the entry for Dare County.

Sec. 3. Section 2 of Chapter 131 of the 1987 Session Laws reads as rewritten:

"Sec. 2. The seasons for hunting black bears in Tyrrell and Washington Counties in 1988 and succeeding ~~years~~ years, and in Dare County in 1990 and succeeding years, shall be established as authorized by Chapter 113 of the General Statutes; provided, however, there shall be no season for the year for hunting black bears in a county if the board of commissioners of that county adopts an ordinance stating the county's objection to the season that would otherwise be established for that year as authorized by Chapter 113 of the General Statutes."

Sec. 4. Section 6 of Chapter 131 of the 1987 Session Laws reads as rewritten:

"Sec. 6. This act applies only to the counties of ~~Tyrrell~~ Tyrrell, Dare, and Washington."

Sec. 5. This act applies only to Dare County.

Sec. 6. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2059

CHAPTER 838

AN ACT TO REMOVE FROM THE CORPORATE LIMITS OF THE TOWN OF BLACK MOUNTAIN AN AREA INCLUDED IN ERROR IN AN ANNEXATION ORDINANCE EFFECTIVE FEBRUARY 28, 1989.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Black Mountain are reduced by removing the following described tract:

LYING AND BEING in Black Mountain Township, Buncombe County, North Carolina:

BEGINNING at a stake marking the southwest corner of that property described as the first tract in that deed recorded in Deed Book 755 at Page 362, Buncombe County Registry; thence from said Beginning East 420 feet to a stake; thence North 1 degree 15' West 504.87 feet to a stake marking the northwest corner of a 9.7 acre tract of land conveyed to the North Carolina State Tubercular Sanitorium; thence North 88 degrees 50' West 404 feet to a point in Cragmont Road; thence along and with said road in a southerly direction for a distance of 510 feet to the point of BEGINNING, being approximately 4.5 acres and being all of the property of Mary C. Lyda and son, Paul E. Lyda, as described in that deed recorded in Deed Book 755 at Page 362, Buncombe County Registry.

Sec. 2. This act shall become effective February 28, 1989.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2113

CHAPTER 839

AN ACT TO PROVIDE THAT BLADEN COUNTY IS
AUTHORIZED TO CONSTRUCT GAS LINES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 433, Session Laws of 1985, reads as rewritten:

"AN ACT TO PROVIDE THAT STANLY COUNTY IS AND
BLADEN COUNTIES ARE AUTHORIZED TO CONSTRUCT GAS
LINES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-274 is amended by adding a new subdivision to the end to read:

'(7) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without.'

Sec. 2. G.S. 40A-3(c) is amended by adding a new subdivision (12) to read:

'(12) An airport authority established under the provisions of Chapter 419 of the 1971 Session Laws of North Carolina for the purposes of that Chapter.'

Sec. 3. This act applies only to Stanly County, except that Section 1 also applies to Bladen County.

Sec. 4. This act is effective upon ratification."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2133

CHAPTER 840

AN ACT TO TRANSFER A TRACT OF LAND FROM THE
CORPORATE LIMITS OF THE CITY OF BURLINGTON TO
THE CORPORATE LIMITS OF THE TOWN OF ELON
COLLEGE.

The General Assembly of North Carolina enacts:

Section 1. All the area included in the following property description is hereby removed from the corporate limits of the City of Burlington and added to the corporate limits of the Town of Elon College:

That certain tract or parcel of land located in Boone Station Township, Alamance County, North Carolina, adjoining Alamance Country Club, Inc., and a 92.2398 acre tract owned by Elon Homes for Children as shown on the Final Map of Property of HHJL&M Associates, said map consisting of two pages and being recorded in Plat Book 40 at Pages 159 through 160 of the Alamance County Register, and Alamance Country Club, Inc., and being more particularly described as follows:

BEGINNING at an iron stake found located in the common boundary line of the aforesaid 92.2398 acre tract and Alamance Country Club, Inc., said iron stake being located N. 07 deg. 19' 55" E. 118.12 feet from the northeasternmost corner of a 0.9366 acre tract as shown on the Final Map, Map One of Two, Property of HHJL&M Associates, and running thence from said point of beginning with the line of the aforesaid 92.2398 acre tract, N. 07 deg. 26' 45" E. 399.93 feet to an iron stake found; running thence again with the line of the aforesaid 92.2398 acre tract, N 07 deg. 29' 52" E. 319.90 feet to a new iron stake located in the line of the aforesaid 92.2398 acre tract, a corner with Alamance Country Club, Inc., running thence with the line of Alamance Country Club, Inc., the following courses and distances: S 28 deg. 21' 08" E. 504.48 feet to a new iron stake; thence, S. 21 deg. 32' 16" E. 248.64 feet to a new iron stake; thence S. 84 deg.

49' 14" W. 426.16 feet to the point and place of BEGINNING and containing 3.6078 acres, more or less, as shown on the Final Map, Map One of Two of the Property of HHJL&M Associates, prepared by Alley, Williams, Carmen and King, Inc., Engineers & Architects, Wayne B. Perry, Registered Land Surveyor, Job No. 89227, which plat is recorded in Plat Book 40, at Page 159 of the Alamance County Registry.

Sec. 2. Section 1 of this act shall have no effect upon the validity of any liens of the City of Burlington for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the City of Burlington.

Sec. 3. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.B. 2270

CHAPTER 841

AN ACT TO AMEND THE LEGAL DESCRIPTION OF THE LAND BEING WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF DURHAM AND TO AMEND THE METES AND BOUNDS DESCRIPTION OF A PORTION OF THE REAL PROPERTY LOCATED WITHIN THE COUNTY OF DURHAM SET FORTH IN SECTION 2, CHAPTER 435, SESSION LAWS OF 1985.

The General Assembly of North Carolina enacts:

Section 1. The real property described in Section 5 of this act, having been annexed by the City of Durham, North Carolina, pursuant to the provisions of North Carolina General Statutes Chapter 160A, Article 4A, by ordinances adopted on the 6th day of April, 1987, and the 5th day of September, 1989, is hereby removed from within the corporate limits of the City of Durham, North Carolina.

Sec. 2. Upon the effective date of this act, a copy of this act duly certified, shall be recorded in the office of the Register of Deeds of Durham County, North Carolina; a copy of this act duly certified shall be delivered to the City Clerk of the City of Durham, North Carolina; a copy of this act duly certified shall be delivered to the Secretary of State of the State of North Carolina; and a copy of this act duly certified shall be delivered to the Durham County Board of Elections.

Sec. 3. From and after the effective date of this act, no municipality shall have or exercise, upon or within the property or

territory described in Section 5, any extraterritorial jurisdiction or authority under Article 19 of Chapter 160A of the North Carolina General Statutes or any similar municipal charter provision, and the county or counties in which lies the property or territory described in Section 5 shall have full jurisdiction over the property or territory described in Section 5, including without limitation all powers and authority granted by Article 18 of Chapter 153A of the General Statutes, notwithstanding any agreements between any county or counties and any municipality or municipalities to the contrary. The provisions of this section shall not apply to all or any portion of the property or territory described in Section 5 which, subsequent to the effective date of this act, is annexed by a municipality pursuant to Part 1 or Part 4 of Article 4A of Chapter 160A of the General Statutes or any similar successor legislation thereto.

Sec. 4. Section 2 of Chapter 435 of the Session Laws of 1985 is amended as follows:

(1) by deleting

"thence leaving the southern right of line of So-Hi Drive S 3° 35' 21" E 2059.30 feet; thence as shown on the plat recorded in Durham County Plat Book 52, pages 71 and 72 S 89° 03' E 300.08 feet; thence as shown on the plat recorded in Durham County Plat Book 105, page 145, N 6° 14' 05" E 2444.70 feet;" and substituting:

"thence continuing along the southern right-of-way boundary of So-Hi Drive N 40° 53' 00" E 482.65 feet as shown on the plat recorded in Durham County Plat Book 113, Page 65;" and

(2) by deleting

"thence S 6° 41' 51" W 2617.22 feet; thence as shown on a plat recorded in Durham County Plat Book 86, page 65, S 84° 18' 00" E 508.57 feet; thence N 5° 45' E 407.00 feet; thence S 84° 24' 46" E 609.28 feet; thence as shown on a plat recorded in Durham County Plat Book 93, page 65, S 82° 26' 43" E 660.00 feet; thence N 6° 58' 30" E 626.58 feet; thence S 84° 37' 48" E 165.0 feet; thence N 6° 14' 00" E 960.0 feet; thence S 82° 52' 23" E 819.16 feet; thence with the southern right of way line of Ellis Road southeasterly along an arc having a radius of 6436.64 feet a distance of 705.12 feet; thence as shown on plat recorded in Durham County Plat Book 105, page 28, and with the southern right of way line of Ellis Road, S 79° 07' 30" E 211.10 feet;" and substituting

"thence N 05° 01' 51" E approximately 830 feet to an iron pipe located at the northwest corner of property shown on Durham County Plat Book 111, page 45; running thence S 84° 02' 36" E 1295.45 feet; running thence N 01° 21' 11" E 10.59 feet; thence N 64° 32' 49" E 38.88 feet; thence S 36° 00' 12" E 66.44 feet; thence S 67° 58' 33" E 256.49 feet; thence S 51° 59' 55" E 147.77 feet to the

western boundary of the right-of-way of Ellis Road; thence along the western right-of-way boundary of Ellis Road in a southeasterly direction as it makes a counterclockwise curve as the western right-of-way of Ellis Road becomes the southern right-of-way of Ellis Road to the western right of way boundary of the Durham Freeway;".

Sec. 5. The property or territory is located in Durham County, North Carolina, and is more particularly described as follows: BEGINNING at a stake set in the western right-of-way boundary of Ellis Road, said stake being located at the intersection of the western right-of-way boundary of Ellis Road with the southern right-of-way boundary of So-Hi Drive; running thence along and with the western right-of-way boundary of Ellis Road the following courses and distances: in a generally southerly direction by the arc of a curve having a radius of 20,671.88 feet, a distance of 191.46 feet; south 21° 29' 38" east 439.52 feet; in a counterclockwise direction by the arc of a curve having a radius of 621.63 feet, a distance of 354.90 feet to a stake; thence leaving the right-of-way boundary of Ellis Road south 47° 40' 53" west 147.55 feet to a stake; thence south 62° 23' 30" west 440.98 feet to a stake; thence south 6° 01' 35" west 251.23 feet to a stake; thence north 82° 57' 19" west 971.72 feet to a stake; thence north 82° 56' 40" west 210.28 feet to a stake; thence north 10° 7' 31" east 470.92 feet to a stake; thence south 82° 55' 31" east 209.63 feet to a stake; thence north 10° 06' 06" east approximately 900.79 feet to a point 200 feet south of and perpendicular to the southern right-of-way boundary line of So-Hi Drive; thence in a northwesterly direction along a line 200 feet south of and parallel to the southern right-of-way boundary line of So-Hi Drive, a distance of approximately 1,176 feet to a point on the western line of property shown on plat and survey recorded in Durham County Plat Book 111, Page 45; running thence along said western line north 05° 01' 51" east approximately 200 feet to the southern boundary of the right-of-way of So-Hi Drive; running thence north 05° 01' 51" east 138.15 feet to the stake at the northwest corner of the property shown on Durham County Plat Book 111, Page 45; running thence south 84° 02' 36" east 1,295.45 feet to a stake; thence north 01° 21' 11" east 10.59 feet to a stake; thence north 64° 32' 49" east 38.88 feet to a stake; thence south 36° 00' 12" east 66.44 feet to a stake; thence south 67° 58' 33" east 256.49 feet to a stake; thence south 51° 59' 55" east 147.77 feet to a stake set in the western right-of-way boundary of Ellis Road; thence along and with the western right-of-way boundary of Ellis Road the following courses and distances: south 22° 27' 11" east 248.51 feet; in a southerly direction by the arc of a curve having a radius of 20,671.88 feet, a distance of 76.01 feet to a stake on the northern boundary of So-Hi Drive; thence running

along the western boundary of Ellis Road and crossing So-Hi Drive to a stake at the southern boundary of the right-of-way of So-Hi Drive, the point and place of BEGINNING.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

S.B. 896

CHAPTER 842

AN ACT TO INCLUDE FIRE SPRINKLER CONTRACTORS UNDER THE LICENSURE REQUIREMENTS OF THE STATE BOARD OF EXAMINERS OF PLUMBING AND HEATING CONTRACTORS; AND TO CHANGE THE COMPOSITION OF THE BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-16 reads as rewritten:

" § 87-16. *Board of Examiners; appointment; term of office.*

There is created the State Board of Examiners of ~~Plumbing and Heating~~ Plumbing, Heating, and Fire Sprinkler Contractors consisting of seven members appointed by the Governor: one member from a school of engineering of the Greater University of North Carolina, one member who is a plumbing inspector from a city in North Carolina, one licensed air conditioning contractor, one licensed plumbing or mechanical contractor, one licensed heating contractor, one licensed fire sprinkler contractor, and ~~two persons who have no ties~~ one person who has no tie with the construction industry to represent the interests of the public at large. Members serve for terms of seven years, with the term of one member expiring each year. The term of the member initially appointed to fill the position of licensed fire sprinkler contractor shall commence April 25, 1991. No member appointed after June 7, 1979, shall serve more than one complete consecutive term. Vacancies occurring during a term are filled by appointment of the Governor for the remainder of the unexpired term."

Sec. 2. G.S. 87-19 reads as rewritten:

" § 87-19. *Regular and special meetings; quorum.*

The Board after holding its first meeting as hereinbefore provided, shall thereafter hold at least two regular meetings each year. Special meetings may be held at such times and places as the bylaws and/or rules of the Board provide; or as may be required in carrying out the provisions hereof. A quorum of the Board shall consist of not less than ~~three~~ four members."

Sec. 3. G.S. 87-21 reads as rewritten:

"§ 87-21. *Definitions; contractors licensed by Board; examination; posting license, etc.*

(a) Definitions. -- For the purpose of this Article:

- (1) The word 'plumbing' is hereby defined to be the system of pipes, fixtures, apparatus and appurtenances, installed upon the premises, or in a building, to supply water thereto and to convey sewage or other waste therefrom.
- (2) The phrase 'heating, group number one' shall be deemed and held to be the heating system of a building, which requires the use of high or low pressure steam, vapor or hot water, including all piping, ducts, and mechanical equipment appurtenant thereto, within, adjacent to or connected with a building, for comfort heating.
- (3) The phrase 'heating, group number two' means an air conditioning system which consists of an assemblage of interacting components producing conditioned air for comfort cooling by the lowering of temperature, and having a mechanical refrigeration capacity in excess of fifteen tons, and which circulates air.
- (4) The phrase 'heating, group number three' shall be deemed and held to be a direct heating system of a building which produces heat to raise the temperature of the space within the building for the purpose of comfort in which electric heating elements or products of combustion exchange heat either directly with the building supply air or indirectly through a heat exchanger and using an air distribution system of ducts. A heating system requiring air distribution ducts and supplied by ground water or utilizing a coil supplied by water from a domestic hot water heater not exceeding 150° Fahrenheit requires either plumbing or heating group number one license to extend piping from valved connections in the domestic hot water system to the heating coil and requires either heating group number one or heating group number three license for installation of coil, duct work, controls, drains and related appurtenances.
- (5) Any person, firm or corporation, who for a valuable consideration, installs, (i) alters or restores, or offers to install, alter or restore, either plumbing, heating group number one, or heating group number two, or heating group number three, or (ii) lays out, fabricates, installs, alters or restores, or offers to lay out, fabricate, install, alter or restore fire sprinklers, or any combination thereof, as defined in this Article, shall be deemed and held to be engaged in the business of ~~plumbing or heating contracting~~

plumbing, heating, or fire sprinkler contracting; provided, however, that nothing herein shall be deemed to restrict the practice of qualified registered professional engineers. Any person who installs a ~~plumbing or heating~~ plumbing, heating, or fire sprinkler system on property which at the time of installation was intended for sale or to be used primarily for rental is deemed to be engaged in the business of ~~plumbing or heating~~ plumbing, heating, or fire sprinkler contracting without regard to receipt of consideration, unless exempted elsewhere in this Article.

- (6) The word 'contractor' is hereby defined to be a person, firm or corporation engaged in the business of ~~plumbing or heating~~ plumbing, heating, or fire sprinkler contracting.
- (7) The word 'heating' shall be deemed and held to mean heating group number one, heating group number two, heating group number three, or any combination thereof.
- (8) The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required.
- (9) The word 'Board' means the State Board of Examiners of ~~Plumbing and Heating~~ Plumbing, Heating, and Fire Sprinkler Contractors.
- (10) The word 'experience' means actual and practical work directly related to the category of plumbing, heating group number one, heating group number two, ~~or~~ heating group number three, or fire sprinkler contracting, and includes related work for which a license is not required.
- (11) The phrase 'fire sprinkler' means an automatic or manual sprinkler system designed to protect the interior or exterior of a building or structure from fire, and where the primary extinguishing agent is water. These systems include wet pipe and dry pipe systems, pre-action systems, water spray systems, foam water sprinkler systems, foam water spray systems, nonfreeze systems, and circulating closed-loop systems. These systems also include the overhead piping, combination standpipes, inside hose connections, thermal systems used in connection with the sprinklers, tanks, and pumps connected to the sprinklers, and controlling valves and devices for actuating an alarm when the system is in operation. This subsection shall not apply to owners of property who are building or improving farm outbuildings. This subsection shall not include water and standpipe systems having no connection with a fire sprinkler system.

Nothing herein shall prevent licensed plumbing contractors, utility contractors, or fire sprinkler contractors from installing underground water supplies for fire sprinkler systems.

(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. -- In order to protect the public health, comfort and safety, the Board shall establish two classes of licenses: Class I covering all ~~structures and systems to which this Article applies, plumbing, heating, and fire sprinkler systems~~ for all structures, and Class II covering plumbing and heating systems in single-family detached residential dwellings. The Board shall prescribe the standard of competence, experience and efficiency to be required of an applicant for license of each class, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards, and related subjects as these subjects pertain to either plumbing or heating; and as plumbing, heating, or fire sprinkler systems. The examination for a fire sprinkler contractor's license shall include such materials as would test the competency of the applicant and which may include the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET). As a result of the examination, the Board shall issue a certificate of license of the appropriate class in ~~plumbing or heating, plumbing, heating, or fire sprinkler contracting~~, and a license shall be obtained, in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in, the business of ~~either plumbing or heating~~ plumbing, heating, or fire sprinkler contracting, or any combination thereof. The Board may require experience as a condition of examination, provided that (i) the experience required may not exceed two years, (ii) that up to one-half the experience may be in the form of academic or technical courses of study, and (iii) that registration is not required at the commencement of the period of experience. Conditions of examination set by the Board shall be uniformly applied to each applicant within each license classification. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, and ~~it may provide an examination for fire sprinkler contracting or may accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout.~~ The Board is

authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group number two, or heating group number three, or fire sprinkler contracting, or any combination thereof. Each application for examination shall be accompanied by a check, post-office money order, or cash, in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year, and additional examinations may be given at such other times as the Board may deem wise and necessary. Any person may demand in writing a special examination, and upon payment by the applicant of the cost of holding such examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for such examination. Upon satisfactory proof of the applicant's inability to write and upon demand of an applicant for a Class II plumbing or heating license six weeks prior to an examination, the Board shall conduct the examination of that applicant orally, and shall not require that applicant to take a written examination as to examination inquiries answered other than by preparation of diagrams. Signed statements from two reliable citizens resident in the home county of the applicant shall constitute satisfactory proof of an applicant's inability to write. A person who fails to pass any examination shall not be reexamined until the next regular examination.

(c) To Whom Article Applies. -- The provisions of this Article shall apply to all persons, firms, or corporations who engage in, or attempt to engage in, the business of ~~plumbing or heating~~ plumbing, heating, or fire sprinkler contracting, or any combination thereof as defined in this Article. The provisions of this Article shall not apply to those who make minor repairs or minor replacements to an already installed system of plumbing or ~~heating~~, heating, but shall apply to those who make repairs, replacements, or modifications to an already installed fire sprinkler system.

(d) Repealed by Session Laws 1979, c. 834, s. 7.

(e) Posting License; License Number on Contracts, etc. -- The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities.

(f) Repealed by Session Laws 1971, c. 768, s. 4.

(g) The Board may, in its discretion, grant to ~~plumbing or heating~~ plumbing, heating, or fire sprinkler contractors licensed by other states license of the same or equivalent classification without written examination upon receipt of satisfactory proof that the qualifications of such applicants are substantially equivalent to the qualifications of

holders of similar licenses in North Carolina and upon payment of the usual license fee.

(h) Notwithstanding any other provision of this Article, any North Carolina resident engaged in the business of fire sprinkler contracting and holding a fire sprinkler privilege license pursuant to G.S. 105-55 on or before the effective date of this act may, within one year from said date, file an application for licensure as a fire sprinkler contractor on forms prepared by the Board, and the Board shall issue a certificate of license in fire sprinkler contracting upon the payment of the fees as provided by G.S. 87-22 and further upon presentation of satisfactory evidence which clearly establishes that the applicant was engaged in the business of fire sprinkler contracting within three years prior to the effective date of this act. The provisions of this subsection shall expire one year from the effective date of this act."

Sec. 4. G.S. 87-22 reads as rewritten:

" § 87-22. License fee based on population; expiration and renewal; penalty.

All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, in cities or towns of 10,000 inhabitants or more shall pay an annual license fee not exceeding seventy-five dollars (\$75.00), and in cities or towns of less than 10,000 inhabitants an annual license fee not exceeding fifty dollars (\$50.00). All persons, firms, or corporations engaged in the business of fire sprinkler contracting shall pay an initial application fee not to exceed seventy-five dollars (\$75.00) and an annual license fee not to exceed three hundred dollars (\$300.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. It shall be the duty of the secretary and treasurer to cause to be mailed to every licensee registered hereunder notice to his last known address reflected on the records of the Board of the amount of fee required for renewal of license, such notice to be mailed at least one month in advance of the expiration of said license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the fee therefor during the month of January in each year, the Board shall increase said license fee ten per centum (10%) for each month or fraction of a month that payment is delayed; provided that the penalty for nonpayment shall not exceed the amount of the annual fee, and provided further that the Board requires reexamination upon failure of a licensee to renew license within three years after expiration. The Board may adopt regulations requiring attendance at programs of continuing education as a condition of license renewal. A licensee employed full time as a local government

plumbing, heating, or mechanical inspector and holding qualifications from the Code Officials Qualifications Board may renew his license at a fee not to exceed twenty-five dollars (\$25.00)."

Sec. 5. G.S. 87-23 reads as rewritten:

" § 87-23. *Revocation or suspension of license for cause.*

(a) The Board shall have power to revoke or suspend the license of or order the reprimand or probation of any ~~plumbing or heating~~ plumbing, heating, or fire sprinkler contractor, or both, any combination thereof, who is guilty of any fraud or deceit in obtaining or renewing a license, or who fails to comply with any provision or requirement of this Article, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of ~~either a plumbing or heating~~ a plumbing, heating, or fire sprinkler contractor, or both, any combination thereof, as defined in this Article. Any person may prefer charges of such fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, against any ~~plumbing or heating~~ plumbing, heating, or fire sprinkler contractor, or both, any combination thereof, who is licensed under the provisions of this Article. All of such charges shall be in writing and verified by the complainant, and such charges shall be heard and determined by the Board in accordance with the provisions of Chapter ~~450A~~ 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Chapter, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee."

Sec. 6. G.S. 87-24 reads as rewritten:

" § 87-24. *Reissuance of revoked licenses; replacing lost or destroyed license.*

The Board may in its discretion reissue license to any person, firm or corporation whose license may have been revoked: Provided, ~~three~~ four or more members of the Board vote in favor of such reissuance for reasons deemed sufficient by the Board. A new certificate of registration to replace any license which may be lost or destroyed may be issued subject to the rules and regulations of the Board."

Sec. 7. G.S. 87-25 reads as rewritten:

" § 87-25. *Violations made misdemeanor; employees of licensees excepted.*

Any person, firm or corporation who shall engage in or offer to engage in, or carry on the business of ~~either plumbing or heating~~ plumbing, heating, or fire sprinkler contracting, or both, any combination thereof, as defined in G.S. 87-21, without first having

been licensed to engage in such business, or businesses, as required by the provisions of this Article; or any person, firm or corporation holding a limited plumbing or heating license under the provisions of this Article who shall practice or offer to practice or carry on any type of plumbing or heating contracting not authorized by said limited license; or any person, firm or corporation who shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a license, or who shall falsely impersonate any other practitioner of like or different name, or who shall use an expired or revoked license, or who shall violate any of the provisions of this Article, shall be guilty of a misdemeanor and upon conviction fined not less than one hundred dollars (\$100.00) or imprisoned for not more than three months, or both, in the discretion of the court. An employee in the course of his work as a bona fide employee of a licensee of the Board shall not be construed to have engaged in the business of ~~either plumbing or heating~~ plumbing, heating, or fire sprinkler contracting, or both, as the case may be."

Sec. 8. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 5th day of July, 1990.

S.B. 1479

CHAPTER 843

AN ACT TO ENABLE RESIDENTS OF THE CITY OF MEBANE TO FISH WITHOUT A HOOK AND LINE FISHING LICENSE WITHIN LAKE MICHAEL, A MUNICIPAL WATER IMPOUNDMENT.

Whereas, the City of Mebane lies within Orange and Alamance Counties; and

Whereas, the City of Mebane owns a raw water impoundment denominated Lake Michael, located in Orange County; and

Whereas, the City of Mebane Parks and Recreation Department operates a fishing concession for the residents of the City of Mebane at said Lake Michael; and

Whereas, residents of that portion of the City of Mebane which lies within Orange County are exempt from the hook and line fishing license requirements of G.S. 133-271 pursuant to the provisions of G.S. 113-276(e); and

Whereas, the City of Mebane desires to afford all residents of the City of Mebane equal opportunity to fish within Lake Michael without being required to purchase a hook and line fishing license;

Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Any person residing within the corporate limits of the City of Mebane, whether in Orange or Alamance Counties, is exempt from the hook and line fishing requirements of G.S. 113-271 when fishing in Lake Michael with hook and line using natural bait, as if he were fishing in his county of residence pursuant to G.S. 113-276(e). "Natural bait" is bait which may be beneficially digested by fish. Lake Michael is a municipal raw water impoundment owned by the City of Mebane and located in Orange County.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1990.

H.B. 736

CHAPTER 844

AN ACT TO INCREASE THE CIVIL PENALTIES FOR VIOLATIONS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-138(a) reads as rewritten:

"(a) Any employer who willfully or repeatedly violates the requirements of this Article, any standard, rule or order promulgated pursuant to this Article, or regulations prescribed pursuant to this Article, may upon the recommendation of the Director to the Commissioner be assessed by the Commissioner a civil penalty of not more than ~~ten thousand dollars (\$10,000)~~ fourteen thousand dollars (\$14,000) for each violation. Any employer who has received a citation for a serious violation of the requirements of this Article or any standard, rule, or order promulgated under this Article or of any regulation prescribed pursuant to this Article, shall be assessed by the Commissioner a civil penalty of up to ~~one thousand dollars (\$1,000)~~ two thousand five hundred dollars (\$2,500) for each such violation. If the violation is adjudged not to be of a serious nature, then the employer may be assessed a civil penalty of up to ~~one thousand dollars (\$1,000)~~ one thousand five hundred dollars (\$1,500) for each such violation. Any employer who fails to correct a violation for which a citation has been issued under this Article within the period allowed for its correction (which period shall not begin to run until the date of the final order of the Board in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay or avoidance of penalties), may be assessed a civil penalty of not more than one thousand dollars (\$1,000). Such assessment shall be made to apply to each day during which such failure or violation

continues. Any employer who violates any of the posting requirements, as prescribed under the provision of this Article, shall be assessed a civil penalty of not more than one thousand dollars (\$1,000) for such violation. The Commissioner upon recommendation of the Director, or the Board in case of an appeal, shall have authority to assess all civil penalties provided by this Article, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer and the record of previous violations."

Sec. 2. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 5th day of July, 1990.

H.B. 2047

CHAPTER 845

AN ACT TO PROVIDE FOR DIRECT CONVERSION OF A SAVINGS INSTITUTION TO A BANK AND A BANK TO A SAVINGS INSTITUTION.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 53 of the General Statutes is amended by adding at the end a new section to read:

"§ 53-17.2. Conversion of savings association to a State bank.

(a) Any association, as defined in G.S. 54B-4, may convert to a State bank as provided in this section. A mutual association must first convert to a stock association before applying for conversion to a bank as provided in this section. As used in this section, the term 'conversion' includes (i) a transaction in which a State bank assumes all or substantially all of the liabilities and purchases all or substantially all of the assets of an association and (ii) any other transaction that results in a change of identity of an association to a State bank. A transaction in which the resulting bank is a subsidiary or an affiliate of a bank holding company or bank which has been in existence for at least two years shall not be subject to the provisions of this section but shall be subject to the approval of the Commissioner of Banks.

(b) Any association, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to convert to a bank and for certification of appropriate amendments to the association's certificate of incorporation to effect the conversion.

(c) The association shall submit a plan of conversion as a part of the application to the Commissioner of Banks. The Commissioner of Banks may recommend approval of the plan of conversion with or

without amendment. The Commissioner of Banks shall recommend approval of the plan of conversion if upon examination and investigation he finds that:

- (1) The resulting bank will operate in a safe, sound, and prudent manner with adequate capital, liquidity, and earnings prospects;
- (2) The directors, officers, and other managerial officials of the association are qualified by character and financial responsibility to control and operate in a legal and proper manner the bank proposed to be formed as a result of the conversion;
- (3) The interest of the depositors, the creditors, and the public generally will not be jeopardized by the proposed conversion; and
- (4) The proposed name will not mislead the public as to the character or purpose of the resulting bank, and the proposed name is not the same as one already adopted or appropriated by an existing bank in this State or so similar as to be likely to mislead the public.

(d) Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which may approve, modify, or disapprove any action taken or recommended by the Commissioner of Banks. The State Banking Commission may promulgate rules to govern conversions undertaken pursuant to this section. The requirements for a converting association shall be no more stringent than those provided by rule or regulation applicable to other FDIC-insured commercial banks. The requirements for a converting association shall be no less stringent than those provided by rule or regulation applicable to other FDIC-insured commercial banks, except as may be allowed during transition periods permitted by subdivisions (e)(4) and (h)(2) of this section.

(e) In the absence of the promulgation of rules under subsection (d), the conditions to be met for approval of the application for conversion should include the following:

- (1) Condition. The applicant's general condition must reflect adequate capital, liquidity, reserves, earnings, and asset composition necessary for safe and sound operation of the resulting bank.
- (2) Management. The management and the board of directors must be capable of supervising a sound banking operation and overseeing the changes that must be accomplished in the conversion from an association to a bank.

- (3) Public Convenience. The Commission must determine that the conversion will have a positive impact on the convenience of the public and will not substantially reduce the services available to the public in the market area.
- (4) Transition. Within a reasonable time after the effective date of the conversion, the resulting bank must divest itself of all assets and liabilities that do not conform to State banking law or rules. The length of this transition period shall be determined by the Commissioner and shall be specified when the application for conversion is approved.

In evaluating each of these conditions, the Commission shall consider a comparison of the relevant financial ratios of the applicant with the average ratios of North Carolina banks of similar asset size. The Commission may not approve a conversion where the applicant presents an undue supervisory concern or has not been operated in a safe and sound manner.

(f) If the State Banking Commission approves the plan of conversion, then the association shall submit the plan to the stockholders as provided in subsection (g). After approval of the plan of conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the conversion is conducted pursuant to law and the association's approved plan of conversion.

(g) After lawful notice to the stockholders of the association and full and fair disclosure of the plan of conversion, the plan must be approved by a majority of the total votes that stockholders of the association are eligible and entitled to cast. The vote by the stockholders may be in person or by proxy. Following the vote of the stockholders, the association shall file with the Commissioner of Banks the results of the vote certified by an appropriate officer of the association. The Commissioner of Banks shall then approve the requested conversion and the association shall file with the Secretary of State amended articles of incorporation with the certificate of the Commissioner of Banks attached. The conversion of the association to a bank shall be effective upon this filing.

(h) The Commissioner of Banks may authorize the resulting bank to do the following:

- (1) Wind up any activities legally engaged in by the association at the time of conversion but not permitted to State banks.
- (2) Retain for a transitional period any assets and deposit liabilities legally held by the association at the effective date of the conversion that may not be held by State banks.

The length, terms, and conditions of the transitional periods under subdivisions (1) and (2) are subject to the discretion of the Commissioner of Banks.

(i) Upon conversion of an association to a bank, the legal existence of the association does not terminate, and the resulting bank is a continuation of the association. The conversion shall be a mere change in identity or form of organization. All rights, liabilities, obligations, interest, and relations of whatever kind of the association shall continue and remain in the resulting bank. Except as may be authorized during a transitional period by the Commissioner of Banks pursuant to subsection (h), a bank resulting from the conversion of an association shall have only those rights, powers and duties which are authorized for banks by the laws of this State and the United States. All actions and legal proceedings to which the association was a party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not taken place."

Sec. 2. Article 3 of Chapter 54B of the General Statutes is amended by adding a new section to read:

"§ 54B-46. Conversion of bank to stock association.

(a) Any bank, as defined in G.S. 53-1, may convert to a stock association as provided in this section.

(b) Any bank, upon a majority vote of its board of directors, may apply to the Administrator for permission to convert to a stock association and for certification of appropriate amendments to the bank's certificate of incorporation to effect the conversion.

(c) The bank shall submit a plan of conversion as a part of the application to the Administrator. The Administrator may recommend approval of the plan of conversion with or without amendment. The Administrator shall recommend approval of the plan of conversion if upon examination and investigation he finds that:

- (1) The resulting stock association will operate in a safe, sound, and prudent manner with adequate capital, liquidity, and earnings prospects;
- (2) The directors, officers, and other managerial officials of the bank are qualified by character and financial responsibility to control and operate in a legal and proper manner the stock association proposed to be formed as a result of the conversion;
- (3) The interest of the depositors, the creditors, and the public generally will not be jeopardized by the proposed conversion; and
- (4) The proposed name will not mislead the public as to the character or purpose of the resulting stock association, and the proposed name is not the same as one already adopted or

appropriated by an existing association in this State or so similar as to be likely to mislead the public.

(d) Any action taken by the Administrator pursuant to this section shall be subject to review by the Commission which may approve, modify, or disapprove any action taken or recommended by the Administrator. The Commission may promulgate rules to govern conversions undertaken pursuant to this section. The requirements for a converting bank shall be no more stringent than those provided by rule or regulation applicable to other FDIC-insured stock associations. The requirements for a converting bank shall be no less stringent than those provided by rule or regulation applicable to other FDIC-insured stock associations, except as may be allowed during transition periods permitted by subdivisions (e)(4) and (h)(2) of this section.

(e) In the absence of the promulgation of rules under subsection (d), the conditions to be met for approval of the application for conversion should include the following:

- (1) Condition. The applicant's general condition must reflect adequate capital, liquidity, reserves, earnings, and asset composition necessary for safe and sound operation of the resulting stock association.
- (2) Management. The management and the board of directors must be capable of supervising a sound stock association operation and overseeing the changes that must be accomplished in the conversion from a bank to a stock association.
- (3) Public Convenience. The Commission must determine that the conversion will have a positive impact on the convenience of the public and will not substantially reduce the services available to the public in the market area.
- (4) Transition. Within a reasonable time after the effective date of the conversion, the resulting stock association must divest itself of all assets and liabilities that do not conform to State banking law or rules. The length of this transition period shall be determined by the Administrator and shall be specified when the application for conversion is approved.

In evaluating each of these conditions, the Commission shall consider a comparison of the relevant financial ratios of the applicant with the average ratios of North Carolina stock associations of similar asset size. The Commission may not approve a conversion where the applicant presents an undue supervisory concern or has not been operated in a safe and sound manner.

(f) If the Administrator approves the plan of conversion, then the bank shall submit the plan to the stockholders as provided in

subsection (g). After approval of the plan of conversion, the Administrator shall supervise and monitor the conversion process and shall ensure that the conversion is conducted pursuant to law and the bank's approved plan of conversion.

(g) After lawful notice to the stockholders of the bank and full and fair disclosure of the plan of conversion, the plan must be approved by a majority of the total votes that stockholders of the bank are eligible and entitled to cast. The vote by the stockholders may be in person or by proxy. Following the vote of the stockholders, the bank shall file with the Administrator the results of the vote certified by an appropriate officer of the bank. The Administrator shall approve the requested conversion and the bank shall file with the Secretary of State amended articles of incorporation with the certificate of the Administrator attached. The conversion of the bank to a stock association shall be effective upon this filing.

(h) The Administrator may authorize the resulting stock association to do the following:

- (1) Wind up any activities legally engaged in by the bank at the time of conversion but not permitted to stock associations.
- (2) Retain for a transitional period any assets and deposit liabilities legally held by the bank at the effective date of the conversion that may not be held by stock associations.

The length, terms, and conditions of the transitional periods under subdivisions (1) and (2) are subject to the discretion of the Administrator, but may not exceed five years after the effective date of the conversion.

(i) Upon conversion of a bank to a stock association, the legal existence of the bank does not terminate, and the resulting stock association is a continuation of the bank. The conversion shall be a mere change in identity or form of organization. All rights, liabilities, obligations, interest, and relations of whatever kind of the bank shall continue and remain in the resulting stock association. Except as may be authorized during a transitional period by the Administrator pursuant to subsection (h), a stock association resulting from the conversion of a bank shall have only those rights, powers, and duties which are authorized for stock associations by the laws of this State and the United States. All actions and legal proceedings to which the bank was a party prior to conversion shall be unaffected by the conversion and proceed as if the conversion had not taken place."

Sec. 3. This act does not affect the validity of (i) any bank/savings institution conversion accomplished through a purchase and assumption or otherwise or (ii) the reorganization of a bank into a bank holding company, where the conversion or reorganization was completed before the effective date of this act.

Sec. 4. This act is effective upon ratification and applies to applications for conversion approved on or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 1990.

H.B. 2085

CHAPTER 846

AN ACT TO PROVIDE THAT PURCHASING PROCEDURES AND CONTRACTS FOR IMPROVEMENTS FOR THE TOWN OF TOPSAIL BEACH SHALL BE GOVERNED BY GENERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. Section 18 of the Charter of the Town of Topsail Beach, being Chapter 67, Session Laws of 1963, reads as rewritten:

"Sec. 18. Purchase Procedure. ~~Before making any~~ Any purchase for supplies, materials or equipment, ~~opportunity shall be given for competition under such rules and regulations, and with such exceptions, as the board of commissioners may prescribe by ordinance.~~ All expenditures for supplies, materials, equipment, ~~involving more than two thousand dollars (\$2,000.00) shall be made on a written contract, and such contract shall be awarded to the lowest responsible bidder after such public notice and competition shall be made as is required by law in North Carolina."~~

Sec. 2. Section 19 of the Charter of the Town of Topsail Beach, being Chapter 67, Session Laws of 1963, reads as rewritten:

"Sec. 19. Contracts for Town Improvements. ~~Any contract for town improvement costing more than thirty-five hundred dollars (\$3500.00) shall be executed by written contract. All such contracts for more than thirty-five hundred dollars (\$3500.00) shall be awarded to the lowest responsible bidder after such public notice and competition as may be prescribed by law in North Carolina, provided the board of commissioners shall have the power to reject all bids and advertise again. Alterations in any contract may be made when authorized by the board of commissioners."~~

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1990.

H.B. 2191

CHAPTER 847

AN ACT TO ALLOW THE COUNTY OF PITT TO ACQUIRE LAND FOR ECONOMIC DEVELOPMENT AND DISPOSE OF SAME WITHOUT PUBLIC SALE.

The General Assembly of North Carolina enacts:

Section 1. The County of Pitt may acquire real property for economic development purposes, and in sale, lease, or otherwise, conveyance of such real property for economic development purposes is exempt from all provisions, restrictions and limitations required to effectuate sales, leases or other conveyances of real property provided for in Article 12 of Chapter 160A and Article 1 of Chapter 158 of the General Statutes.

Sec. 2. The provisions of Sections 1 through 3 of this act shall apply to any property hereafter acquired by the County of Pitt for economic development purposes and that property acquired by the County of Pitt for the construction of a shell building on the Greenville Industries property on U.S. Highway 264 Bypass and fronting on U.S. Highway 264 Bypass.

Sec. 3. Any sale, lease or other conveyance by the County of Pitt, as grantor or lessor, involving real property previously acquired for economic development purposes which would have been permitted under the provisions of this act are confirmed, validated and ratified, provided, however, any disposition of all property previously acquired or hereafter acquired shall be subject to the approval by the Pitt County Board of Commissioners through recommendation by the Pitt County Development Commission.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1990.

S.B. 1362

CHAPTER 848

AN ACT TO TREAT INVESTMENTS IN A PARTNERSHIP IN WHICH THE NORTH CAROLINA ENTERPRISE CORPORATION IS THE ONLY GENERAL PARTNER AS AN INVESTMENT IN THE CORPORATION AND TO EXTEND THE TAX CREDIT FOR INVESTMENTS IN AN ENTERPRISE CORPORATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53A-46 reads as rewritten:

"§ 53A-46. *Tax credit.*

A person or corporation that invests in the equity securities of a North Carolina Enterprise Corporation ~~may be or in the equity securities of a limited partnership in which a North Carolina Enterprise Corporation is the only general partner~~ is entitled to a tax credit as provided in G.S. 105-163.010 through G.S. 105-163.014."

Sec. 2. G.S. 105-163.010(6a) reads as rewritten:

"(6a) North Carolina Enterprise Corporation. -- A corporation established in accordance with Article 3 of Chapter 53A of the General ~~Statutes~~. Statutes or a limited partnership in which a North Carolina Enterprise Corporation is the only general partner."

Sec. 3. G.S. 105-163.011(a) reads as rewritten:

"(a) Corporations. -- Subject to the limitations contained in G.S. 105-163.012, a corporation that invests in the equity securities of a North Carolina Capital Resource Corporation, a North Carolina Enterprise Corporation, or a qualified investment organization is allowed as a credit against the income tax imposed by Division I of this ~~Article or the Article~~, the franchise tax imposed by G.S. 105-116, 105-120.2, and ~~105-122~~ 105-122, or the gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8 for the taxable year an amount equal to twenty-five percent (25%) of the amount invested or seven hundred fifty thousand dollars (\$750,000), whichever is less. The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the investment was made."

Sec. 4. G.S. 105-163.012(a) reads as rewritten:

"(a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the amount of income tax imposed by Division I or II of this ~~Article or by Article~~, the amount of franchise tax imposed by Article 3 of this Chapter, or the amount of gross premiums tax imposed by Article 8B of this Chapter, as appropriate, for the taxable year reduced by the sum of all other credits allowable except tax payments made by or on behalf of the taxpayer. The amount of unused credit allowed under G.S. 105-163.011 may be carried forward for the next five succeeding years."

Sec. 5. G.S. 147-69.2(b)(9), as enacted by Chapter 813 of the 1989 Session Laws, reads as rewritten:

"(9) Obligations and securities of ~~the~~ The North Carolina Enterprise Corporation, or of a limited partnership in which The North Carolina Enterprise Corporation is the only general partner, not to exceed twenty million dollars (\$20,000,000) from all funds."

Sec. 6. This act is effective for taxable years beginning on or after January 1, 1990.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

S.B. 1376

CHAPTER 849

AN ACT AMENDING G.S. 40A-3.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-3(c) is amended by adding a new subdivision to read:

"(14) A joint agency established under Article 20 of Chapter 160A of the General Statutes for purposes of that Article."

Sec. 2. This act applies only to the Winston-Salem/Forsyth County Utility Commission.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

S.B. 1406

CHAPTER 850

AN ACT TO DELAY THE EFFECTIVE DATE OF CHAPTER 372 OF THE 1989 SESSION LAWS RELATING TO THE WASTEWATER TREATMENT PLANT OPERATORS CERTIFICATION COMMISSION, TO PROVIDE FOR THE STUDY OF THE ORGANIZATION, FUNCTIONS, POWERS, AND DUTIES OF THE WASTEWATER TREATMENT PLANT OPERATORS CERTIFICATION COMMISSION BY THE ENVIRONMENTAL REVIEW COMMISSION, AND TO PROVIDE FOR A STUDY BY THE ENVIRONMENTAL REVIEW COMMISSION OF THE FEASIBILITY OF LEVYING A TAX ON THE EMISSION OF AIR CONTAMINANTS AND ON THE DISCHARGE OF WASTE FROM POINT SOURCES TO THE SURFACE WATERS OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. Section 12 of Chapter 372 of the 1989 Session Laws reads as rewritten:

"Sec. 12. This act shall become effective July 1, 1990, 1 September 1991, except that authorization of the Wastewater Treatment Plant Operators Certification Commission to adopt rules necessary to implement this act is effective upon ratification. Rules adopted by the Wastewater Treatment Plant Operators Certification Commission shall become effective July 1, 1990, 1 September 1991."

Sec. 2. The Environmental Review Commission shall study the organization, functions, powers, and duties of the Wastewater Treatment Plant Operators Certification Commission and shall report its findings and recommendations to the 1991 General Assembly.

Sec. 3. The Environmental Review Commission shall study the feasibility of levying a tax on the emission of air contaminants and on the discharge of waste from point sources to the surface waters of the State. The Environmental Review Commission may consider the provisions of 1989 Senate Bills 1251 and 1252 in determining the nature and scope of the study. The foregoing reference to those bills shall not be deemed to have incorporated any of the substantive provisions of those bills into this act. The Environmental Review Commission shall report its findings and recommendations, if any, to the 1991 Session of the General Assembly.

Sec. 4. This act shall become effective 30 June 1990.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

S.B. 1591

CHAPTER 851

AN ACT TO CLARIFY PROVISIONS REGARDING THE APPOINTMENT OF A GUARDIAN AD LITEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-289.29 is amended by adding the following new subsections:

"(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer is filed denying material allegations, or as required under G.S. 7A-289.23; but the court may, in its discretion, appoint a guardian ad litem for a child, either before or after determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the child.

(d) If a guardian ad litem has previously been appointed for the child under G.S. 7A-586, and the appointment of a guardian ad litem could also be made under this section, the guardian ad litem appointed under G.S. 7A-586, and any attorney appointed to assist that guardian, shall also represent the child in all proceedings under this Article and shall have the duties and payment of a guardian ad litem appointed under this section, unless the court determines that the best interests of the child require otherwise."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2076

CHAPTER 852

AN ACT TO AUTHORIZE THE BOARD OF COMMISSIONERS OF DAVIDSON COUNTY TO ADOPT AN ORDINANCE PROHIBITING THE DISCHARGE OF FIREARMS OR PELLET GUNS FROM THE ROADWAYS AND RIGHTS-OF-WAY IN DAVIDSON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of any other law, including G.S. 153A-129 and Article 22 of Chapter 113 of the General Statutes, the Board of Commissioners of Davidson County may enact an ordinance prohibiting the discharge of any firearm or pellet gun from, on, across, or over the roadway or right-of-way of any public road, street, or highway in Davidson County, except when used in defense of person or property, or when used pursuant to lawful directions of law enforcement officers.

Sec. 2. Any ordinance adopted by the county pursuant to this act may provide for fines and penalties for violation of the ordinance pursuant to the provisions of G.S. 153A-123, and any such ordinance shall be enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2120

CHAPTER 853

AN ACT TO ALLOW THE DAVIE COUNTY BOARD OF COUNTY COMMISSIONERS TO INCREASE THE EXTRATERRITORIAL PLANNING JURISDICTION OF THE TOWN OF MOCKSVILLE WITHIN DAVIE COUNTY OUT TO TWO MILES BEYOND THE CORPORATE LIMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-360(a) is amended by adding the following new sentence immediately after the third sentence:

"Notwithstanding the previous sentence, and with the approval of the Davie County Board of Commissioners, the Town of Mocksville may exercise these powers over any area in Davie County extending not more than two miles beyond its limits, but not in an area within the corporate limits of another city or where another city is exercising these powers."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2123

CHAPTER 854

AN ACT TO ALLOW HENDERSON COUNTY TO NAME PRIVATE ROADS IN UNINCORPORATED AREAS.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 1319 of the 1979 Session Laws, as amended by Chapter 568 of the 1981 Session Laws, and as rewritten by Chapter 98 of the 1983 Session Laws, and as further amended by Chapter 299 of the 1983 Session Laws, and as further amended by Chapter 900 of the 1987 Session Laws, and as further amended by Chapter 906 of the 1987 Session Laws, and as further amended by Chapter 335 of the 1989 Session Laws, reads as rewritten:

"Sec. 3. This act applies only to Brunswick, Cabarrus, Cleveland, Avery, Stokes, Surry, Alamance, New Hanover, Henderson, and McDowell Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2153

CHAPTER 855

AN ACT TO CHANGE THE RESPONSIBILITY FOR APPOINTING AND SUPERVISING THE CITY CLERK AND CITY TREASURER (FINANCE DIRECTOR) OF THE CITY OF STATESVILLE FROM THE COUNCIL TO THE MANAGER.

The General Assembly of North Carolina enacts:

Section 1. Section 4.21 of the Charter of the City of Statesville, being Chapter 289, Session Laws of 1977, reads as rewritten:

"Sec. 4.21. *City Clerk and Deputy City Clerk.* (a) The City Council Manager shall appoint a City Clerk and may appoint a Deputy City Clerk to keep a journal of the proceedings of the Council, to maintain in a safe place all records and documents pertaining to the affairs of the City, and to perform such other duties as may be required by law or as the Council or City Manager may direct.

(b) The City Council may combine the position of the City Clerk with any other office or offices that it sees fit, vesting in the person

holding such combined office or offices the powers and duties of all offices."

Sec. 2. Section 4.23 of the Charter of the City of Statesville, being Chapter 289, Session Laws of 1977, reads as rewritten:

"Sec. 4.23. *City Treasurer.* (a) The City Council Manager shall appoint a Treasurer and may appoint a Deputy Treasurer to perform the duties of the finance officer as required by the Local Government Budget and Fiscal Control Act, and to perform such other duties as the Council City Manager may direct.

(b) The City Council may combine the position of the City Treasurer with any other office or offices that it sees fit, vesting in the person holding such combined office or offices the powers and duties of all offices."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2188

CHAPTER 856

AN ACT TO PERMIT WAKE COUNTY TO USE UNMARKED COUNTY VEHICLES FOR DELIVERY OF CERTAIN HUMAN SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 222 of the 1987 Session Laws reads as rewritten:

"Sec. 2. This act applies only to Cumberland County and Wake County."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2195

CHAPTER 857

AN ACT TO AUTHORIZE THE TOWN OF LONG BEACH TO COMPROMISE OR FORGIVE LOCAL OCCUPANCY TAX PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapters 985 and 1028 of the 1983 Session Laws and Chapter 935 of the 1987 Session Laws, is amended by adding at the end of the second paragraph of Section 39 a new sentence to read:

"The governing body of the city may, for good cause shown, compromise or forgive the additional tax penalties imposed by this section."

Sec. 2. This act applies to the Town of Long Beach only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2196

CHAPTER 858

AN ACT TO AUTHORIZE THE TOWN OF CASWELL BEACH
TO CREATE A SEA TURTLE SANCTUARY.

The General Assembly of North Carolina enacts:

Section 1. The Town of Caswell Beach may create and establish a sea turtle sanctuary within the areas of the town limits above the mean low water mark, to include the foreshore. Any ordinance adopted by the town to regulate activities within the sea turtle sanctuary which may or will disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs must be consistent with the ordinance powers found in G.S. 160A-174, G.S. 160A-308, and any other law. The ordinance adopted by the town may by cross-reference incorporate the criminal statutes regarding the taking of sea turtles at G.S. 113-189 and G.S. 113-337. It shall be unlawful for any person within the sea turtle sanctuary to disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs in violation of an ordinance adopted by the Town of Caswell Beach.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2228

CHAPTER 859

AN ACT TO REDUCE THE NUMBER OF APPEALS BOARD
VOTES REQUIRED TO REVERSE OR MODIFY AN ORDER
OF THE CITY OF CHARLOTTE HOUSING CODE OFFICIAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-446(d) reads as rewritten:

"(d) The appeals board shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may

make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the public officer, but the concurring vote of ~~four~~ three members of the board shall be necessary to reverse or modify any decision or order of the public officer. The board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done."

Sec. 2. This act applies only to the City of Charlotte.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2243

CHAPTER 860

AN ACT TO INCREASE THE MEMBERSHIP OF THE
ELIZABETH CITY-PASQUOTANK COUNTY AIRPORT
AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Section 2(a) of Chapter 198, Session Laws of 1987, reads as rewritten:

"(a) The Airport Authority shall consist of a Chairperson ~~and four~~; six voting members, all of whom shall be resident voters of the County of Pasquotank, ~~Pasquotank~~; and three ex officio, nonvoting members, as provided in Section 3 of this act."

Sec. 2. Section 2(b) of Chapter 198, Session Laws of 1987, reads as rewritten:

"(b) ~~Two~~ Three members shall be appointed by the City Council of Elizabeth City and ~~two~~ three members shall be appointed by the Board of Commissioners of Pasquotank County. Same shall be appointed in June of each year. At the first such election by the City Council and the County of Pasquotank in 1987, one of the two members so appointed by each governing body shall be chosen for a term of one year and the other member for a term of two years. At the election by the City Council and the County of Pasquotank in 1990, the two members so appointed by each governing body shall be chosen for terms of two years. Thereafter each governing body shall appoint one member in June of each odd-numbered year to serve for a term of two years, and two members in June of each even-numbered year to serve for terms of two years. Vacancies among the appointed members of the Airport Authority shall be filled by the governing body who so

appointed the prior person to the office then vacant and said appointee to the vacant seat shall serve the unexpired term."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 225

CHAPTER 861

AN ACT TO AUTHORIZE THE TOWN OF PILOT MOUNTAIN TO EXTEND ITS EXTRATERRITORIAL ZONING.

The General Assembly of North Carolina enacts:

Section 1. In addition to any other area authorized by law, the Town of Pilot Mountain may exercise the powers granted by Article 19 of Chapter 160A of the General Statutes in an area defined as follows:

BEGINNING at the northernmost corporate limit as of May 1, 1990, of the Town of Pilot Mountain, running due north three miles, thence running in a straight line southeast to a point three miles east of the easternmost corporate limit as of May 1, 1990, of the Town of Pilot Mountain, thence running due West to the corporate limits of the Town of Pilot Mountain, provided that any such powers may not be exercised under this act outside of Surry County.

Sec. 2. Any ordinance adopted under the authority of this act shall be recorded in the office of the Register of Deeds of Surry County.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2261

CHAPTER 862

AN ACT TO ALLOW THE CHARLOTTE CITY MANAGER TO SETTLE CLAIMS AGAINST THE CITY WHICH DO NOT EXCEED THIRTY THOUSAND DOLLARS WITHOUT GIVING PRIOR NOTICE TO THE CHARLOTTE CITY COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-167(c) reads as rewritten:

"(c) Subsection (b) shall not authorize any city, authority, or county to pay all or part of a claim made or civil judgment entered unless (1) notice of the claim or litigation for which the settlement of claims or payment exceeds thirty thousand dollars (\$30,000) is given to the city council, authority governing board, or board of county commissioners

as the case may be prior to the time that the claim is settled or civil judgment is entered, and (2) the city council, authority governing board, or board of county commissioners as the case may be shall have adopted, and made available for public inspection, uniform standards under which claims made or civil judgments entered against members or former members of the governing body of any authority, or any city, county, or authority employees or officers, or former employees or officers, shall be paid."

Sec. 2. This act applies to the City of Charlotte only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2272

CHAPTER 863

AN ACT TO MODIFY THE AUTHORITY OF HENDERSON COUNTY TO REGULATE THE SUBDIVISION OF LAND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-335 reads as rewritten:

"§ 153A-335. 'Subdivision' defined.

For purposes of this Part, 'subdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

- (1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;
- (2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for widening or opening streets; and
- (4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.

A county in its ordinance may provide that 'subdivision' does not apply to a family subdivision. A 'family subdivision' is the division of

land into two or more parcels or lots for the purpose of conveying the resulting parcels or lots to a grantee or grantees who are in any degree of lineal kinship to the grantor, or to a grantee or grantees who are within four degrees of collateral kinship to the grantor. The exemption provided by the ordinance shall only apply if the deed of conveyance notes that it is a family subdivision as defined by this section. Degrees of kinship shall be computed in accordance with G.S. 104A-1."

Sec. 1.1. This act does not impose any liability on the State of North Carolina concerning the construction or maintenance of any road.

Sec. 2. This act applies to Henderson County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

H.B. 2273

CHAPTER 864

AN ACT AMENDING THE CHARTER OF THE CITY OF WINSTON-SALEM RELATING TO FAIR HOUSING.

The General Assembly of North Carolina enacts:

Section 1. Article XII of the Charter of the City of Winston-Salem, being Chapter 232, Private Laws of 1927, as amended by Chapter 608, Session Laws of 1981, is rewritten to read:

"ARTICLE XII.

"Fair Housing.

"Sec. 45. Equal Housing.

The Board of Aldermen may adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, national origin, handicap or familial status in real estate transactions. Such ordinances may regulate or prohibit any act, practice, activity or procedure related directly or indirectly, to the sale or rental of public or private housing, which affects or may tend to affect the availability, accessibility or desirability of housing on an equal basis to all persons; may provide that the city may apply to the General Court of Justice or the aggrieved person(s) in a private right of action instituted under the ordinance; may apply to the General Court of Justice for appropriate legal and equitable remedies including mandatory and prohibitory injunctions, temporary restraining orders, orders of abatement, actual and punitive damages, the assessment of civil penalties in accordance with the Fair Housing Amendments Act of 1988, attorney's fees to the prevailing party and the court shall have the power to grant such remedies. The ordinance adopted by the Board of Aldermen shall

provide that the aggrieved person(s) or respondent has the right to elect to have all claims and issues asserted, after a reasonable cause determination has been made by the Human Relations Director, decided in a civil action commenced and maintained by the City thereby foregoing the City's administrative hearing process.

"Sec. 46. Exemptions.

(a) Any ordinance enacted pursuant to this Article may provide for exemption from its coverage:

- (1) The sale or rental of any single-family house by an owner; provided that such private individual owner does not own or have any interest in more than three such single-family houses at any one time; provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted may only apply with respect to one such sale within any 24-month period; provided further, that any single-family house under this exemption may not be sold or rented (i) with the use in any manner of the sales or rental facilities of any person in the business of selling or renting dwellings or the sales or rental services of any real estate broker, agent, salesman or of any employee of any such broker, agent or salesman, or (ii) with the publication, or posting or any advertisement in violation of the ordinance. Nothing in this provision shall prohibit the use of the attorneys, escrow agents, abstractors, title companies and other such provisional assistance as necessary to perfect or transfer the title.
- (2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner actually maintains and occupies one of such living quarters as his or her residence.
- (3) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property.
- (4) The rental of a room or rooms in a private house, not a boarding house, if the lessor or a member of his family resides in the house.
- (5) Housing accommodations owned and operated for other than a commercial purpose by a religious organization, association or society or any nonprofit institution or organization, operated, supervised or controlled by or in conjunction with a religious organization, association or

society shall not be prohibited by this Article from limiting the sale, rental or occupancy of dwellings which it owns or operates to persons of the same religion or from giving preference to such persons unless membership in such religion is restricted on account of race, color, or national origin.

- (6) The sale, rental, exchange or lease of commercial real estate, which is real estate not intended for residential use.
- (7) A private club, not in fact, open to the public, which as an incident to its primary purpose or purposes, provides lodging which it owns or operates for other than commercial purposes limiting the rental or occupancy of such lodging to its members or giving preference to its members.
- (8) The provisions of this Article regarding familial status shall not apply with respect to housing for older persons.

(b) As used in this section 'housing for older persons' means, housing:

- (1) Provided under any State or federal program that is specifically designed and operated to assist elderly persons (as defined in the State or federal program); or
- (2) Intended for, and solely occupied by, persons 62 years of age or older; or
- (3) Intended and operated for occupancy by at least one person 55 years of age or older as shown by the following factors:
 - a. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and
 - b. That at least eighty percent (80%) of the dwellings are occupied by at least one person 55 years of age or older per unit; and
 - c. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(c) Housing shall not fail to meet the requirements of 'housing for older persons' by reason of:

- (1) Persons residing in such housing as of the date of enactment of this act who do not meet the requirements of subsection (b)(2) and (3).

- (2) Unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of subsection (b)(2) and (3).
- (d) Housing facilities newly constructed for first occupancy after the date of enactment of this Article shall satisfy the requirements of subsection (b)(3) if:
 - (1) When twenty-five percent (25%) of the units are occupied, eighty percent (80%) of the occupied units are occupied by at least one person 55 years or older thereafter; and
 - (2) Eighty percent (80%) of all newly occupied units are occupied by at least one person 55 years or older until such time as eighty percent (80%) of all units in the housing facility are occupied by at least one person 55 years or older.

"Sec. 47. Enforcement.

The Board of Aldermen may create or designate a committee or commission to assume the duty and responsibility of enforcing ordinances adopted pursuant to this Article. Such body may be granted any authority deemed necessary by the Board of Aldermen for the proper enforcement of any fair housing ordinance, including the power to:

- (1) Promulgate rules for the receipt, initiation, investigation and conciliation of complaints of violations of the ordinance.
- (2) Conduct public hearings regarding complaints of alleged violations of the ordinances; issue subpoenas, request and require answers to interrogatories; request and require the production of documents and things, and the entry upon land and premises in the possession of a party to a complaint alleging a violation of the ordinances and compel the attendance of witnesses at public hearings under oath or affirmation.
- (3) Apply to the General Court of Justice, upon the failure of any person to respond to or to comply with a lawful interrogatory, request for production of documents and things, request to enter upon land and premises, or subpoena, for an order requiring such person to respond or comply.
- (4) Apply to the General Court of Justice for mandatory and prohibitory injunctions or temporary restraining orders.
- (5) Upon finding reasonable cause to believe that a violation of ordinances has occurred, to petition, with the permission of the Board of Aldermen, the General Court of Justice for appropriate civil relief.

- (6) In the event that the U.S. Department of Housing and Urban Development pursuant to 42 U.S.C. 3610(f) determines that it is required that the commission or committee be able to make final decisions and apply to the General Court of Justice without the permission of the Board of Aldermen, the commission or committee shall have the power to:
 - a. Make final decisions regarding complaints of violations of the ordinances, and
 - b. Petition the General Court of Justice for appropriate civil relief upon a finding of reasonable cause to believe that a violation of the ordinances has occurred.
- (7) If it is further determined by the U.S. Department of Housing and Urban Development that pursuant to 42 U.S.C. 3610(f) the commission or committee must be able to make final decisions reviewable by the General Court of Justice and assess actual damages and civil penalties upon a finding of reasonable cause to believe a violation has occurred, the commission or committee shall have the power to:
 - a. Make final decisions subject to review by the General Court of Justice within 15 days of the decision of the commission or committee, and
 - b. Assess actual damages and/or civil penalties and injunctive or other equitable relief in accordance with the Fair Housing Amendments Act of 1988.

"Sec. 48. Complaints and Other Records.

Neither complaints filed with the Board of Aldermen or any committee or commission designated the duty or responsibility of enforcing ordinances adopted pursuant to this Article nor the results of that body's investigations, discovery or attempts at conciliation shall be subject to examination or copying under the provisions of what is now Chapter 132 of the General Statutes. Each conciliation agreement shall be public record unless the aggrieved person and respondent otherwise agree and the Board of Aldermen or the designated commission or committee determine that disclosure is not required to further the purposes of this Article.

"Sec. 49. Committee Meetings.

The Board of Aldermen may provide that the statutory provisions relating to meetings of governmental bodies, presently embodied in Article 33C of Chapter 143 of the General Statutes, shall not apply to the activity of any body authorized to enforce the ordinances, to the extent that said body is receiving a complaint or conducting an investigation, discovery or conciliation pertaining to a complaint filed pursuant to the ordinances.

"Sec. 50. Occupancy Standards.

Nothing in this Article should be construed to prohibit reasonable local, State, and federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1990.

S.B. 463

CHAPTER 865

AN ACT PROVIDING FOR THE REGULATION OF ATHLETE AGENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 78C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 8.

"Regulation of Athlete Agents.

" § 78C-71. Definitions.

The following definitions apply in this Article:

- (1) 'Agent contract' means any contract or agreement under which an athlete authorizes an athlete agent to negotiate to solicit on behalf of the athlete with one or more professional sports teams for the employment of the athlete by one or more professional sports teams.
- (2) 'Athlete' means an individual who:
 - a. Seeks to be employed as a professional athlete;
 - b. Has never signed a contract for employment with a professional sports team; and
 - c. Is enrolled in a high school located within this State, or has been admitted to an institution of higher education located within this State.

Execution of a personal service contract with the owner or prospective owner of a professional sports team for the purpose of future athletic services is equivalent to signing a contract for employment with a professional sports team.

- (3) 'Athlete agent' means a person that, for compensation, directly or indirectly recruits or solicits an athlete to enter into an agent contract, professional sports services contract, or financial services contract with that person or that for a fee procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team.
- (4) 'Financial services contract' means any contract or agreement under which an athlete authorizes an athlete agent

to provide financial services for the athlete, including the making and execution of investment and other financial decisions by the agent on behalf of the athlete. Excluded from this definition are financial services contracted for by the athlete directly with banks, securities dealers, and other financial institutions.

- (5) 'Person' means an individual, a company, a corporation, an association, a partnership, or another legal entity.

" § 78C-72. Registration requirements; renewal.

(a) An athlete agent must register with the Secretary of State before the athlete agent may contact an athlete, either directly or indirectly, while the athlete is located in this State. An athlete agent may make those contacts only in accordance with this Article.

(b) An applicant for registration as an athlete agent must submit a written application for registration to the Secretary of State on a form prescribed by the Secretary of State. The applicant must provide the information required by the Secretary of State, which shall include:

- (1) The name of the applicant and the address of the applicant's principal place of business;
- (2) The business or occupation engaged in by the applicant for the five years immediately preceding the date of application;
- (3) A description of the applicant's formal training, practical experience, and educational background relating to the applicant's professional activities as an athlete agent;
- (4) If requested by the Secretary of State, the names and addresses of five professional references; and
- (5) The names and addresses of all persons, except bona fide employees on stated salaries, that are financially interested as partners, associates, or profit sharers in the operation of the business of the athlete agent, except that an application for registration or renewal by any member of the North Carolina State Bar must state only the names and addresses of those persons that are involved in the activities of the athlete agent and is not required to state the names and addresses of all persons who may be financially interested as members of a law firm or professional corporation but who do not become involved in the business of the athlete agent.

(c) If the applicant is a corporation, the information required by subsection (b) of this section must be provided by each officer of the corporation. If the applicant is an association or a partnership, the information must be provided by each associate or partner.

(d) A certificate of registration issued under this Article is valid for one year from the date of issuance. The Secretary of State by rule may adopt a system under which certificates of registration expire on

various dates during the year. For the year in which the registration expiration date is changed, the renewal fee payable on the anniversary of the date of issuance shall be prorated so that each registrant pays only that portion of the fee that is allocable to the number of months during which the registration is valid. On the renewal of the certificate of registration on the new expiration date, the total registration renewal fee is payable.

(e) A registered athlete agent may renew the registration by filing a renewal application in the form prescribed by the Secretary of State, accompanied by the renewal fee. The renewal application must include the information prescribed by the Secretary of State, which shall include:

- (1) The names and addresses of all athletes for whom the athlete agent is providing professional services as an athlete agent for compensation at the time of the renewal; and
- (2) The names and addresses of all athletes not currently represented by the athlete agent for whom the athlete agent has performed professional services as an athlete agent for compensation during the three years preceding the date of the application.

(f) The fee for issuing a certificate of registration or renewing a registration is two hundred dollars (\$200.00). The fee is payable when an application for a certificate or the renewal of a certificate is filed and is not refundable to the applicant if the certificate or renewal is denied. No fee is imposed for a temporary certificate of registration.

(g) When an application for registration or renewal is made and the registration process has not been completed, the Secretary of State may issue a temporary or provisional registration certificate that is valid for no more than 90 days.

(h) Before the issuance or renewal of a certificate of registration, an athlete agent that enters into a financial services contract with an athlete must deposit with the Secretary of State a surety bond in the sum of one hundred thousand dollars (\$100,000), payable to the State and conditioned that the person applying for the registration will comply with this Article, will pay all amounts due any individual or group of individuals when the person or the person's representative or agent has received those amounts, and will pay all damages caused to any athlete by reason of the intentional misrepresentation, fraud, deceit, or any unlawful or negligent act or omission by the registered athlete agent or the agent's representative or employee while acting within the scope of the financial services contract. The athlete agent shall maintain the bond until two years after the date on which the athlete agent ceases to engage in the provision of financial services for

an athlete. This subsection does not limit the recovery of damages to the amount of the surety bond.

(i) If an athlete agent that has entered into a financial services contract with an athlete fails to file a new bond with the Secretary of State not later than the 30th day after date of receipt of a notice of cancellation issued by the surety of the bond, the Secretary of State shall suspend the certificate of registration issued to that athlete agent under the bond until the athlete agent files a new surety bond with the Secretary of State.

(j) An athlete agent that enters into an agent contract only is not required to meet the bond requirements of this section.

(k) The registration requirements of this section do not apply to a North Carolina licensed and resident attorney who:

a. Neither advertises directly for, nor solicits, any athlete by representing to any person that he has special experience or qualifications with regard to representing athletes; and

b. Represents no more than two athletes.

" § 78C-73. *Disciplinary actions, investigations and subpoenas.*

(a) The Secretary of State may suspend, deny, or revoke a certificate of registration issued under this Article for a violation of this Article or rule adopted under this Article or may take other disciplinary action. Chapter 150B of the General Statutes governs the denial, suspension, or revocation of a certificate of registration.

(b) The Secretary of State in his discretion:

(1) May make such public or private investigations within or outside of this State as he deems necessary to determine whether any person has violated or is about to violate any provision of this Article or any rule or order hereunder, or to aid in the enforcement of this Article or in the prescribing of rules and forms hereunder;

(2) May require or permit any person to file a statement in writing, under oath or otherwise as the Secretary of State determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) May publish information concerning any violation of this Article or any rule or order hereunder; and

(4) May designate employees of the Office of Secretary of State as investigators to implement the provisions of this Article. Investigators may serve and execute notices, orders, or demands issued by the Secretary of State for the surrender of registrations or relating to any administrative proceeding.

(c) For the purpose of any investigation or proceeding under this Article, the Secretary of State or any employee designated by him may

administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Secretary of State deems relevant or material to the inquiry.

(d) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the Secretary of State, may issue to the person an order requiring him to appear before the Secretary of State, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(e) The Secretary of State may act under subsection (c) or apply under subsection (d) to enforce subpoenas in this State at the request of a governmental agency of another state that administers sports law if the alleged activities constituting a violation for which the information is sought would be a violation of this Article or any rule hereunder if the alleged activities had occurred in this State.

" § 78C-74. Disposition of fees.

Fees and other funds received under this Article by the Secretary of State shall be deposited in the State treasury to the credit of the General Fund.

" § 78C-75. Contracts; cancellation option.

(a) Any agent contract or financial services contract to be used by a registered athlete agent with an athlete must be on a form approved by the Secretary of State.

(b) Each contract must state the fees and percentages to be paid by the athlete to the athlete agent and must include the following statements printed in at least 10-point boldface type:

NOTICE TO CLIENT

(1) THIS ATHLETE AGENT IS REGISTERED WITH THE SECRETARY OF STATE OF THE STATE OF NORTH CAROLINA. REGISTRATION WITH THE SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT BY THE SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE AGENT OR OF THE SPECIFIC TERMS AND CONDITIONS OF THIS CONTRACT.

(2) DO NOT SIGN THIS CONTRACT IF YOU HAVE NOT READ IT OR IF IT CONTAINS BLANK SPACES.

(3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL

THE CONTRACT NOT LATER THAN THE 16TH DAY AFTER
THE DATE ON WHICH YOU SIGN THIS CONTRACT.

(c) Each athlete agent shall file a memorandum of contract for each agent contract and financial services contract with the Secretary of State and the athlete's high school principal or the athletic director of the institution of higher learning to which the athlete is admitted. A memorandum of contract shall include the date of the contract, the name and address of the athlete, the name and address of the athlete agent, the name and address of the employer, the date of the memorandum of contract, and the signature of the athlete agent. The athlete agent must file the memorandum of contract with the Secretary of State and the educational institution within five days after the date the contract is signed by the athlete.

(d) An athlete may cancel an agent contract or a financial services contract before the expiration of the 16th day after the contract is signed, or an executed copy of the contract is delivered to the athlete and the memorandum of contract is filed with the school, whichever is later, by notifying the athlete agent of the cancellation in writing.

" § 78C-76. Advertising requirement; prohibitions.

(a) In all forms of advertising used by the athlete agent, the agent shall disclose the name and address of the agent.

(b) An athlete agent may not:

- (1) Publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement or give any false information or make any false promises or representations concerning any employment to any person;
- (2) Divide fees with or receive compensation from a professional sports league or franchise or its representative or employee;
- (3) Enter into any agreement, written or oral, by which the athlete agent offers anything of value to any employee of a high school or of an institution of higher education located in this State in return for the referral of any clients by that employee;
- (4) Offer anything of value, excluding reasonable entertainment expenses and transportation expenses to and from the athlete agent's registered principal place of business, to induce an athlete to enter into an agreement by which the athlete agent will represent the athlete; or
- (5) Except as provided by G.S. 78C-77, directly contact an athlete to discuss the athlete agent's representation of the athlete in the marketing of the athlete's athletic ability or reputation or the provision of financial services by the athlete agent, or enter into any agreement, written or oral, by

which the athlete agent will represent the athlete, until after completion of the athlete's last high school or intercollegiate contest, including postseason games, and may not enter into an agreement before the athlete's last high school or intercollegiate contest that purports to take effect at a time after that contest is completed.

(c) This Article does not prohibit or limit an athlete agent from sending to an athlete written materials relating to the professional credentials of the agent or to specific services offered by the agent relating to the representation of an athlete in the marketing of an athlete's athletic ability or reputation or to the provision of financial services by the agent to the athlete. This Article does not prohibit an athlete or the athlete's parents, legal guardians, or other advisors from contacting and interviewing an athlete agent to determine that agent's professional proficiency in the representation of an athlete, in the marketing of the athlete's athletic ability or reputation, or the provision of financial services by the agent on behalf of the athlete.

" § 78C-77. Permitted contacts with certain athletes.

An athlete agent must give prior written notice of his intention to contact an athlete with respect to representing the athlete as an athlete agent to the athletic director of the institution of higher education, or to the principal of the high school in which the athlete is enrolled. All such contact shall strictly adhere to the rules of each separate institution with regard to the time, place, and duration of the athlete agent's contact.

" § 78C-78. Remedies for violation; criminal penalty.

(a) In any civil action brought based upon a violation of G.S. 78C-72(a) or G.S. 78C-76, the relief granted by the court may include the following:

- (1) Forfeiture of any right of repayment the athlete agent may otherwise have for anything of value either received by an athlete as an inducement to enter into any agent contract or financial services contract or received by an athlete before completion of the athlete's last high school or intercollegiate contest;
- (2) A refund of any consideration paid to the athlete agent on an athlete's behalf; or
- (3) Reasonable attorney's fees and court costs incurred by an injured party.

(b) Any agent contract or financial services contract that is negotiated by an athlete agent who has failed to comply with this Article is voidable at the option of the injured party.

(c) An athlete agent commits an offense if the agent knowingly violates G.S. 78C-72(a) or G.S. 78C-76. An offense under this subsection shall be punished as a Class J felony.

(d) The Secretary of State may refer such evidence as is available concerning violations of this Article or of any rule or order hereunder to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Article. Upon receipt of such reference, the district attorney may request that a duly employed attorney of the Secretary of State assist in the prosecution of such violation or violations on behalf of the State.

(e) Nothing in this Article limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law.

" § 78C-79. Civil penalty.

(a) The Secretary of State may issue an order against an applicant, registered person, or other person who willfully violates this Article or a rule or order of the Secretary of State under this Article, imposing a civil penalty up to a maximum of two thousand five hundred dollars (\$2,500) for a single violation or of twenty-five thousand dollars (\$25,000) for multiple violations in a single proceeding or a series of related proceedings. In determining the amount of penalty to be imposed, the Secretary shall consider, among other factors, the egregiousness of the violation, the degree and extent of any harm caused by the violation, the prior record of the violator in complying or failing to comply with this Article or similar laws of other states, and the amount of any monetary gain received as a result of the violation.

(b) Chapter 150B of the General Statutes governs the imposition of a civil penalty under this section.

(c) A civil penalty owed under this section may be recovered in a civil action brought by either the Secretary of State or the Attorney General.

" § 78C-80. Records.

(a) An athlete agent shall keep records as provided by this section and shall provide the Secretary of State with the information contained in the records on request. The records must contain:

- (1) The name and address of each athlete employing the athlete agent, the amount of any fees received from the athlete, and the specific services performed on behalf of the athlete; and
- (2) All travel and entertainment expenditures incurred by the athlete agent, including food, beverages, maintenance of a hospitality room, sporting events, theatrical and musical events, and any transportation, lodging, or admission expenses incurred in connection with the entertainment.

(b) The records kept by the athlete agent under subdivision (2) of subsection (a) of this section must adequately describe:

- (1) The nature of the expenditure;
- (2) The dollar amount of the expenditure;
- (3) The purpose of the expenditure;
- (4) The date and place of the expenditure; and
- (5) Each person on whose behalf the expenditure was made.

" § 78C-81. Rules.

The Secretary of State may, in accordance with Chapter 150B of the General Statutes, adopt rules necessary to carry out this Article."

Sec. 2. (a) This act shall become effective September 1, 1990.

(b) An athlete agent is not required to be registered and is not required to comply with this act until January 1, 1991.

(c) In addition to the information required under G.S. 78C-72(b) as enacted by this act, a person who is engaged in business as an athlete agent on the effective date of this act must include in the registration application:

- (1) The names and addresses of all athletes for whom the applicant is providing professional services regulated under this Article for compensation on the date the application is filed; and
- (2) The names and addresses of all athletes not currently represented by the athlete agent for whom the athlete agent has performed professional services for compensation during the three years preceding the date of the application.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

S.B. 1351

CHAPTER 866

AN ACT TO MAKE TECHNICAL CHANGES RELATING TO JOINT, TRUST, AND PERSONAL AGENCY ACCOUNTS AT FINANCIAL INSTITUTIONS.

The General Assembly of North Carolina enacts:

Part I.

Savings Institution Accounts

Section 1. G.S. 54B-129 reads as rewritten:

" § 54B-129. Joint accounts.

(a) Any two or more persons may open or hold a withdrawable account or accounts. The withdrawable account and any balance thereof shall be held by them as joint tenants, with or without right of survivorship, as the contract shall provide; the account may also be held pursuant to G.S. 41-2.1 and have incidents set forth in that

section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact as well. Unless the persons establishing the account have agreed with the association that withdrawals require more than one signature, payment by the association to, or on the order of, any persons holding an account authorized by this section shall be a total discharge of the association's obligation as to the amount so paid. Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the association of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the association for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated. A pledge of such account by any holder or holders shall, unless otherwise specifically agreed upon, be a valid pledge and transfer of such account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account. Persons establishing an account under this section shall sign a statement showing their ~~decision in regard to~~ election of the right of survivorship in the account, and containing ~~the following language in a conspicuous manner;~~ set forth in a conspicuous manner and substantially similar to the following:

‘SAVINGS AND LOAN (or name of institution)
JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP
G.S. 54B-129

We understand that by establishing a joint account under the provisions of North Carolina General Statute 54B-129 that:

1. The savings and loan association (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have agreed with the association that withdrawals require more than one signature; and
2. ~~If we elect to create the right of survivorship in the account, that upon~~ Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not ~~be inherited by~~ pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

~~We _____~~ [write in "do" or "do not"] We DO elect to create the right of survivorship in this account.

(a) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law as appropriate.

(b) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of law relating to estate taxes; the provisions herein shall regulate, govern and protect the association in its relationships with such joint owners of deposit accounts as herein provided.

(c) No addition to such account, nor any ~~withdrawal, withdrawal or payment or revocation~~ shall affect the nature of the account as a joint account, account, or affect the right of any tenant to terminate the account."

Sec. 2. G.S. 54B-130 reads as rewritten:

" § 54B-130. *Trust accounts.*

(a) If any person ~~holding or opening~~ establishing a withdrawable account shall execute a written agreement with the association containing a statement that it is executed pursuant to the provisions of this subsection and providing for the account to be held in the name of such person as trustee for not more than one person designated as beneficiary, the account and any balance thereof shall be held as a trust account ~~and~~ with the following incidents:

- (1) The trustee during the trustee's lifetime may change the designated beneficiary by a written direction to the association, ~~association; and~~
- (2) The trustee may withdraw ~~or~~ funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the trustee's personal ~~order, and such order~~. Such payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn, ~~withdrawn; and~~
- (3) ~~Upon the death of the trustee, the person designated as beneficiary, if such person~~ If the beneficiary is living and of legal age at the death of the trustee, the beneficiary shall be the holder of the account, and payment by the association to the holder shall be a total discharge of the association's obligation as to the amount paid.
- (4) If the beneficiary predeceases the trustee, the account shall become an individual account of the trustee and shall have the legal incidents of an individual account.

- (5) If the named beneficiary is not of legal age at the death of the trustee, the association shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the association shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.
- (6) Funds in a trust account established pursuant to this subsection shall belong to the beneficiary upon the death of the trustee and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the association of funds in the trust account to the beneficiary shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the association for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary is not terminated.

The person establishing an account under this subsection shall sign a statement containing ~~the following~~ language set forth in a conspicuous manner and substantially similar to the following: ~~in a conspicuous manner:~~

‘SAVINGS AND LOAN (or name of institution)
TRUST ACCOUNT
G.S. 54B-130(a)

I understand that by establishing a trust account under the provisions of North Carolina General Statute 54B-130(a) that:

1. During my lifetime I may withdraw the money in the account; and
2. By written direction to the savings and loan association (or name of institution) I may change the beneficiary; and
3. Upon my death the money remaining in the account will belong to the beneficiary, and the money will not be inherited by my heirs or be controlled by my will.

(a1) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

(b) Whenever the beneficiary of a trust account does not survive the trustee then the account and any balance thereof which exists shall be held by the trustee in the trustee's own right and for the trustee's own use and benefit.

(c) No addition to such accounts, nor any withdrawal, payment, ~~revocation~~ or change of beneficiary shall affect the nature of such

accounts as trust ~~accounts~~, accounts, or affect the right of a trustee to terminate the account.

(d) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes."

Sec. 3. G.S. 54B-139(a) reads as rewritten:

"(a) A person may open a personal agency account by written contract containing a statement that it is executed pursuant to the provisions of this section. A personal agency account may be a checking account, savings account, time deposit, or any other type of withdrawable account or certificate. The written contract shall name an agent who shall have authority to act on behalf of the depositor in regard to the account as set out in this subsection. The agent shall have the authority to:

- (1) Make, sign or execute checks drawn on the account or otherwise make withdrawals from the account;
- (2) Endorse checks made payable to the principal for deposit only into the account; and
- (3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

A person establishing an account under this section shall sign a statement containing the following language substantially similar to the following in a conspicuous manner:

'SAVINGS AND LOAN (or name of institution)

PERSONAL AGENCY ACCOUNT

G.S. 54B-139

I understand that by establishing a personal agency account under the provisions of North Carolina General Statute 54B-139 that the agent named in the account may:

1. Sign checks drawn on the account; and
2. Make deposits into the account.

I also understand that upon my death the money remaining in the account will be controlled by my will or inherited by my heirs.

,"

Part II.

Bank Accounts

Sec. 4. G.S. 53-146.1 reads as rewritten:

" § 53-146.1. *Joint accounts.*

(a) Any two or more persons may establish a deposit account or accounts by written contract. The deposit account and any balance thereof shall be held for them as joint tenants, with or without right of survivorship, as the contract shall provide; the account may also be held pursuant to G.S. 41-2.1 and have the incidents set forth in that

section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact as well. Unless the persons establishing the account have agreed with the bank that withdrawals require more than one signature, payment by the bank to, or on the order of, any persons designated in the contract authorized by this section shall be a total discharge of the bank's obligation as to the amount so paid. Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the bank of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the bank for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated. A pledge of such account by any owner or owners, unless otherwise specifically agreed upon, shall be a valid pledge and transfer of such account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account. Persons establishing an account under this section shall sign a statement showing their ~~decision in regard to election of the right of survivorship in the account, and containing the following language in a conspicuous manner:~~ set forth in a conspicuous manner and substantially similar to the following:

'BANK (or name of institution)

JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP

G.S. 53-146.1

We understand that by establishing a joint account under the provisions of North Carolina General Statute 53-146.1 that:

1. The bank (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have agreed with the bank that withdrawals require more than one signature; and
2. ~~If we elect to create the right of survivorship in the account, that upon~~ Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not ~~be inherited by~~ pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

We _____ (write in 'do' or 'do not') We DO elect to create the right of survivorship in this account.

- _____,
- (a) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other common law provisions of the General Statutes or the common law as appropriate.
- (b) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes; the provisions herein shall regulate, govern and protect the bank in its relationship with such joint owners of deposit accounts as herein provided.
- (c) No addition to such deposit account, nor any ~~withdrawal, withdrawal or payment or revocation~~ shall affect the nature of the account as a joint account, account, or affect the right of any tenant to terminate the account."

Sec. 5. G.S. 53-146.2 reads as rewritten:

"§ 53-146.2. *Trust accounts.*

(a) If any person establishing a deposit account shall execute a written agreement with the bank containing a statement that it is executed pursuant to the provisions of this subsection and providing for the account to be held in the name of such person as trustee for not more than one person designated as beneficiary, the account and any balance thereof shall be held as a trust account, ~~and~~ with the following incidents:

- (1) The trustee during the trustee's lifetime may change the designated beneficiary by a written direction to the bank, ~~bank; and~~
- (2) The trustee may withdraw ~~or~~ funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the trustee's personal order, and such order. Such payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn, ~~withdrawn; and~~
- (3) ~~Upon the death of the trustee, the person designated as beneficiary, if such person~~ If the beneficiary is living and of legal age at the death of the trustee, the beneficiary shall be the owner of the account, and payment by the bank to such owner shall be a total discharge of the bank's obligation as to the amount paid.

- (4) If the beneficiary predeceases the trustee, the account shall become an individual account of the trustee and shall have the legal incidents of an individual account.
- (5) If the named beneficiary is not of legal age at the death of the trustee, the bank shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the bank shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.
- (6) Funds in a trust account established pursuant to this subsection shall belong to the beneficiary upon the death of the trustee and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the bank of funds in the trust account to the beneficiary shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the bank for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary is not terminated.

The person establishing an account under this subsection shall sign a statement containing the following language set forth in a conspicuous manner and substantially similar to the following: ~~in a conspicuous manner;~~

‘BANK (or name of institution)
TRUST ACCOUNT
G.S. 53-146.2

I understand that by establishing a trust account under the provisions of North Carolina General Statute 53-146.2 that:

1. During my lifetime I may withdraw the money in the account; and
2. By written direction to the bank (or name of institution) I may change the beneficiary; and
3. Upon my death the money remaining in the account will belong to the beneficiary and the money will not be inherited by my heirs or be controlled by will.

(a1) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance thereof which exists

shall be owned by the trustee in the trustee's own right and for the trustee's own use and benefit.

(c) No addition to such accounts, nor any withdrawal, payment, ~~revocation~~ or change of beneficiary shall affect the nature of such accounts as trust ~~accounts~~, accounts, or affect the right of a trustee to terminate the account.

(d) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes."

Sec. 6. G.S. 53-146.3(a) reads as rewritten:

"(a) Any person may establish a personal agency account by written contract containing a statement that it is executed pursuant to the provisions of this section. A personal agency account may be a checking account, savings account, time deposit, or any other type of withdrawable account or certificate. The written contract shall name an agent who shall have authority to act on behalf of the depositor in regard to the account in the actions set out in this subsection. The agent shall have the authority to:

- (1) Make, sign or execute checks drawn on the account or otherwise make withdrawals from the account;
- (2) Endorse checks made payable to the principal for deposit only into the account; and
- (3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

A person establishing an account under this section shall sign a statement containing the following language substantially similar to the following in a conspicuous manner:

'BANK (or name of institution)
PERSONAL AGENCY ACCOUNT
G.S. 53-146.3

I understand that by establishing a personal agency account under the provisions of North Carolina General Statute 53-146.3 that the agent named in the account may:

1. Sign checks drawn on the account; and
2. Make deposits into the account.

I also understand that upon my death the money remaining in the account will be controlled by my will or inherited by my heirs.

,"

Part III.

Credit Union Accounts

Sec. 7. G.S. 54-109.58 reads as rewritten:

" § 54-109.58. *Joint accounts.*

(a) Shares may be issued to and deposits received from any two or more persons opening or holding an account or accounts, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. The account and any balance thereof shall be held by them as joint tenants, with or without right of survivorship, as the contract shall provide; the account may also be held pursuant to G.S. 41-2.1 and have the incidents set forth in that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact as well. Unless the persons establishing the account have agreed with the credit union that withdrawals require more than one signature, payment by the credit union to, or on the order of, any persons holding an account authorized by this section shall be a total discharge of the credit union's obligations as to the amount so paid. Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the credit union of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the credit union for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated. A pledge of such account by any holder or holders shall, unless otherwise specifically agreed upon, be a valid pledge and transfer of such account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account. Persons establishing an account under this section shall sign a statement showing their ~~decision in regard to~~ election of the right of survivorship in the account, and containing ~~the following language in a conspicuous manner;~~ set forth in a conspicuous manner and substantially similar to the following:

‘CREDIT UNION (or name of institution)
JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP
G.S. 54-109.58

We understand that by establishing a joint account under the provisions of North Carolina General Statute 54-109.58 that:

1. The credit union (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have agreed with the credit union that withdrawals require more than one signature; and

2. ~~If we elect to create the right of survivorship in the account, that upon~~ Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not ~~be inherited by pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.~~

We _____ [~~write in 'do' or 'do not'~~] We DO elect to create the right of survivorship in this account.

(a) This section shall not be deemed exclusive. Deposit accounts, not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law as appropriate.

(b) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes; the provisions herein shall regulate, govern and protect the credit union in its relationship with such joint owners of accounts as herein provided.

(c) No addition to such account, nor any ~~withdrawal, withdrawal or payment or revocation~~ shall affect the nature of the account as a joint ~~account.~~ account, or affect the right of any tenant to terminate the account."

Sec. 8. G.S. 54-109.57 reads as rewritten:

"§ 54-109.57. *Trusts accounts.*

(a) Shares may be issued to and deposits received from any person ~~holding or opening~~ establishing an account who shall execute a written agreement with the credit union containing a statement that it is executed pursuant to the provisions of this subsection and providing for the account to be held in the name of such person as trustee for not more than one person designated as beneficiary, the account and any balance thereof shall be held as a trust account, ~~and~~ with the following incidents:

- (1) The trustee during the trustee's lifetime may change the designated beneficiary by a written direction to the ~~credit union; and~~ credit union.
- (2) The trustee may ~~withdraw or~~ withdraw or funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the trustee's personal ~~order, and such order.~~ Such payment or withdrawal shall constitute a revocation of the trust agreement as to the amount ~~withdrawn, withdrawn; and~~
- (3) ~~Upon the death of the trustee, the person designated as beneficiary, if such person~~ If the beneficiary is living and of

legal age at the death of the trustee, the beneficiary shall be the holder of the account, and payment by the credit union to the holder shall be a total discharge of the credit union's obligation as to the amount paid.

- (4) If the beneficiary predeceases the trustee, the account shall become an individual account of the trustee and shall have the legal incidents of an individual account.
- (5) If the named beneficiary is not of legal age at the death of the trustee, the credit union shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the credit union shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.
- (6) Funds in a trust account established pursuant to this subsection shall belong to the beneficiary upon the death of the trustee and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the credit union of funds in the trust account to the beneficiary shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the credit union for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary is not terminated.

The person establishing an account under this subsection shall sign a statement containing the following language set forth in a conspicuous manner and substantially similar to the following: ~~in a conspicuous manner;~~

‘CREDIT UNION (or name of institution)
TRUST ACCOUNT
G.S. 54-109.57

I understand that by establishing a trust account under the provisions of North Carolina General Statute 54-109.57 that:

1. During my lifetime I may withdraw the money in the account; and
2. By written direction to the credit union (or name of institution) I may change the beneficiary; and
3. Upon my death the money remaining in the account will belong to the beneficiary, and the money will not be inherited by my heirs or be controlled by my will.

(a1) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance thereof which exists shall be held by the trustee in the trustee's own right and for the trustee's own use and benefit.

(c) No addition to such accounts, nor any withdrawal, payment, ~~revocation~~ or change of beneficiary shall affect the nature of such accounts as trust ~~accounts~~, accounts, or affect the right of a trustee to terminate the account.

(d) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of law relating to estate taxes."

Sec. 9. G.S. 54-109.63(a) reads as rewritten:

"(a) A person may open a personal agency account by written contract containing a statement that it is executed pursuant to the provisions of this section. A personal agency account may be a checking account, savings account, time deposit, or any other type of withdrawable account or certificate. The written contract shall name an agent who shall have authority to act on behalf of the depositor in regard to the account as set out in this subsection. The agent shall have the authority to:

- (1) Make, sign or execute checks drawn on the account or otherwise make withdrawals from the account;
- (2) Endorse checks made payable to the principal for deposit only into the account; and
- (3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

A person establishing an account under this section shall sign a statement containing the following language substantially similar to the following in a conspicuous manner:

‘CREDIT UNION (or name of institution)
PERSONAL AGENCY ACCOUNT
G.S. 54-109.63

I understand that by establishing a personal agency account under the provisions of North Carolina General Statute 54-109.63 that the agent named in the account may:

1. Sign checks drawn on the account; and
2. Make deposits into the account.

I also understand that upon my death the money remaining in the account will be controlled by my will or inherited by my heirs.

Part IV.

Effective Date

Sec. 10. This act shall become effective January 1, 1991.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

S.B. 1358

CHAPTER 867

AN ACT TO ALLOW THE CITY OF ASHEBORO TO LEASE
AIRPORT PROPERTY FOR AN ADDITIONAL PERIOD
WITHOUT COMPETITIVE BID.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-272 reads as rewritten:

" § 160A-272. *Lease or rental of property.*

Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than ~~40~~ 30 years (except as otherwise provided herein) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included. Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

No public notice need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less. Leases for terms of more than ~~40~~ 30 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property."

Sec. 2. This act applies only to leases by the City of Asheboro of city owned property in connection with the operation of Asheboro Municipal Airport.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

S.B. 1443

CHAPTER 868

AN ACT TO AMEND THE REPORTING DATE FROM 1990 to 1991 FOR FILING WITH THE GENERAL ASSEMBLY OF A SOCIAL SERVICES PLAN FOR THE STATE OF NORTH CAROLINA BY THE DEPARTMENT OF HUMAN RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 448 of the 1989 Session Laws reads as rewritten:

"Sec. 6. The Department of Human Resources shall report periodically on the Plan required by Section 3 of this act to the Social Services Study Commission, if that Commission is reauthorized. The Department shall submit the final Plan to the General Assembly by the convening of the ~~1990~~ 1991 Regular Session of the General Assembly."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

S.B. 1496

CHAPTER 869

AN ACT TO EXTEND TIME FOR THE RESOLUTION OF CLAIMS TO LAND UNDER NAVIGABLE WATERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-206(e) reads as rewritten:

"(e) A person who claims that the application of G.S. 113-205 or this section has deprived him of his private property rights in land under navigable waters or his right of fishery in navigable waters without just compensation may file a complaint in the superior court of the county in which the property is located to contest the application of G.S. 113-205 or this section. If the plaintiff prevails, the trier of fact shall fix the monetary worth of the claim, and the Department may condemn the claim upon payment of this amount to him if the Secretary considers condemnation appropriate and necessary to conserve the marine and estuarine resources of the State. The Department may pay for a condemned claim from available funds. An action under this subsection is considered a condemnation action and is therefore subject to G.S. 7A-248.

The limitation period for an action brought under this subsection is three years. This period is tolled during the disability of the plaintiff.

No action, however, may be instituted under this subsection after ~~December 31, 1993, 31 December 1997.~~"

Sec. 2. G.S. 113-206(f) reads as rewritten:

"(f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall favor public ownership of submerged lands and public trust rights. The Secretary's action does not alter or affect in any way the rights of a claimant or the State.

To facilitate resolution of claims registered pursuant to G.S. 113-205, the Secretary, in cooperation with the Secretary of Administration and the Attorney General, shall establish a plan to resolve these claims by ~~December 31, 1990, 31 December 1994.~~ The Secretary shall notify the Secretary of Administration and the Attorney General of the resolution of each claim. In addition, on or before October 1 of each year, the Secretary shall submit a report to the Joint Legislative Commission on Governmental Operations stating the following:

- (1) The number of claims registered pursuant to G.S. 113-205 that were resolved during the preceding year;
- (2) The cost of resolving these claims;
- (3) The number of unresolved claims; and
- (4) Payments made to acquire claims by condemnation."

Sec. 3. G.S. 105-151.12(e) reads as rewritten:

"(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before ~~December 31, 1990, 31 December 1994~~ to qualify for the credit allowed by this section."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

S.B. 1523

CHAPTER 870

AN ACT TO AUTHORIZE FORSYTH COUNTY TO LEVY AN ADDITIONAL THREE PERCENT OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Section 28 of Chapter 908 of the 1983 Session Laws, as amended, is rewritten to read:

"Sec. 28. Disposition of Taxes Collected. (a) Forsyth County shall remit the net proceeds of the occupancy tax as follows: (i) five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis; and (ii) the remaining net proceeds shall be remitted to the Forsyth County Tourism Development Authority. 'Net proceeds'

means gross proceeds less the cost to the county of administering and collecting the tax.

(b) A municipality may expend funds distributed to it pursuant to subsection (a) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (a) to further the development of travel, tourism, and conventions within Forsyth County. The Forsyth County Tourism Development Authority may not use more than ten percent (10%) of the funds distributed to it pursuant to subsection (a) for administrative expenses."

Sec. 2. Part VII of Chapter 908 of the 1983 Session Laws, as amended by Chapters 33 and 924 of the 1985 Session Laws, is amended by adding a new section to read:

"Sec. 30.2. Additional Tax. (a) In addition to the taxes authorized by Sections 24, 25, and 30.1 of this Part, the Forsyth County Board of Commissioners may levy a room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of accommodations taxable under those sections. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with Sections 24 through 27 and 29 through 30 of this Part. Forsyth County may not levy a tax under this section unless it also levies taxes under Sections 24, 25, and 30.1 of this Part.

(b) The net proceeds of the tax shall be distributed as follows: (i) five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis; and (ii) the remaining net proceeds shall be divided among Forsyth County, the City of Winston-Salem, and the Forsyth County Tourism Development Authority on a pro rata basis. 'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.

(c) Forsyth County or a municipality may expend funds distributed to it pursuant to subsection (b) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (b) in accordance with Section 28(b) of this Part."

Sec. 3. Section 29 of Chapter 908 of the 1983 Session Laws, as amended by Chapter 33 of the 1985 Session Laws, is rewritten to read:

"Sec. 29. Appointment and Duties of Tourism Development Authority. (a) When the board of county commissioners adopts a resolution levying a room occupancy tax pursuant to this Part, it shall

also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following thirteen members:

- (1) A county commissioner appointed by the board of county commissioners, who shall serve as an ex officio member.
- (2) A member of the Winston-Salem Board of Aldermen appointed by the board of aldermen, who shall serve as an ex officio member.
- (3) Four owners or operators of hotels, motels, or other taxable tourist accommodations, two of which own or operate hotels, motels, or other accommodations with more than 100 rental units, one of whom shall be appointed by the Winston-Salem Board of Aldermen and one by the board of county commissioners; and two of which own or operate hotels, motels, or other accommodations with 100 or fewer rental units, one of whom shall be appointed by the Winston-Salem Board of Aldermen and one by the board of county commissioners.
- (4) Three individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Winston-Salem Board of Aldermen, one by the Winston-Salem Area Chamber of Commerce, and one by the board of county commissioners.
- (5) Four individuals appointed by the Forsyth County Tourism Development Authority who do not own or operate hotels, motels, or other tourist accommodations taxable under this Part or tourist businesses, and who (i) are local citizens with a demonstrated interest in the tourist and visitor industry or (ii) have demonstrated relevant expertise in such fields as the transportation industry, visitor attractions, the convention center and coliseum, or marketing and advertising.

(a1) All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms, except the members appointed pursuant to subdivisions (a)(1) and (2), who shall serve at the pleasure of the appointing board, and the initial members, who shall serve the following terms:

- (1) Of the members appointed pursuant to subdivision (a)(3), one appointee of the board of aldermen and the board of commissioners shall serve a two-year term and one appointee of the board of aldermen and the board of commissioners shall serve a three-year term, as designated by the board of aldermen and board of county commissioners;
- (2) Of the three members appointed pursuant to subdivision (a)(4), the appointee of the Winston-Salem Board of Aldermen shall serve a one-year term, the appointee of the Winston-Salem Area Chamber of Commerce shall serve a two-year term, and the appointee of the board of county commissioners shall serve a three-year term.

Members may serve no more than two consecutive terms. The members shall elect a chairman, who shall serve for a term of two years. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The finance officer for Forsyth County shall be the ex officio finance officer of the Authority.

(b) The Tourism Development Authority may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions and may recommend to the board of county commissioners that county staff be employed for this advice and assistance. Any county staff employed under this Part shall be hired and supervised by the Tourism Development Authority, which shall pay the salaries and expenses of this staff.

(c) The Tourism Development Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

H.B. 608

CHAPTER 871

AN ACT TO AUTHORIZE WATER AND SEWER CONDEMNORS TO EXERCISE THE POWER OF QUICK-TAKE IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 40A OF THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

H.B. 755

CHAPTER 872

AN ACT CONCERNING VOLUNTARY SATELLITE
ANNEXATIONS BY THE TOWN OF GARNER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) does not apply to the Town of Garner for any noncontiguous annexation within the following area:

Beginning from a point at the intersection of Garner's ETJ and Creech Road (500 feet east of Colony Drive), moving south along Creech Road to Garner Road, continuing south across Main Street down Rand Mill Road to NC 50, then south on NC 50 to the intersection of NC 50 and ETJ line, then moving along the ETJ line eastward to US 70, then northward and westward along the ETJ line to the point of the beginning.

Sec. 2. This act is effective upon ratification and expires July 1, 1995.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

H.B. 2045

CHAPTER 873

AN ACT TO ALLOW THE TOWN OF WAKE FOREST TO MAKE
SPECIAL ASSESSMENTS WITHOUT PETITION FOR THE
PLACEMENT OF UTILITY LINES UNDERGROUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-216 is amended by adding a new subdivision to read:

"(1c) The placement of utility lines underground. For the purpose of this subdivision, 'utility lines' means:
a. electric distribution lines less than 66,000 volts;
b. telephone; and
c. cable television
cables and appurtenances, including those serving street lighting."

Sec. 2. This act applies to the Town of Wake Forest only, and as to that town, only to property (according to the Zoning Ordinance of the Town in effect as of May 1, 1990) within the C-1 Central Business District or within the HCBF (Historic Central Business District).

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

H.B. 2075

CHAPTER 874

AN ACT TO AUTHORIZE THE TOWN OF CARY TO LEVY AN OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. (a) Authorization; Scope. If the Wake County Board of Commissioners has not levied the tax authorized by Section 1 of Chapter 850 of the 1985 Session Laws (1986 Session) or has levied the tax at a rate of less than three percent (3%), the Cary Town Council may, by ordinance, levy a room occupancy tax at a rate that does not exceed three percent (3%) when combined with the Wake County occupancy tax rate, if any. Before adopting an ordinance to levy a room occupancy tax, the Cary Town Council must hold a public hearing on the proposed tax and must give at least 10 days' public notice of the hearing. This tax shall apply to the gross receipts derived from the rental in the Town of Cary of any room, lodging, or similar accommodation subject to sales tax under G.S. 105-164.4(a)(3). This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales tax.

(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be

stated and charged separately on the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted by him to the town a discount of one percent (1%) of the amount collected as reimbursement for the expenses incurred in collecting the tax.

(c) Administration. The town shall administer a tax levied under this act. A tax levied under this act is due and payable to the town in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied. A return filed with the tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The Cary Town Council may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) and imprisonment not to exceed six months, or both.

(e) Use and Distribution of Tax Proceeds. The Town of Cary shall distribute the net proceeds of the occupancy tax as follows:

- (1) The first fifty percent (50%) of net proceeds from the tax in each fiscal year up to a maximum of one hundred thousand dollars (\$100,000) shall be transferred by the town to the

Cary Convention and Visitor Commission established pursuant to this act for use by the Commission for activities and programs aiding and encouraging convention and visitor promotion;

- (2) The remaining net proceeds shall be retained by the town and may be used only to fund visitor-related programs and activities, including cultural programs, events, or festivals, and convention and visitor programs and activities of the Cary Convention and Visitor Commission.

The town may contract with a nonprofit organization to undertake or carry out the activities and programs for which the proceeds may be expended. All contracts entered into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations. As used in this subsection, "net proceeds" means gross proceeds less the direct cost to the town of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.

(f) Commission Established. When the Cary Town Council adopts an ordinance levying an occupancy tax, it shall also adopt an ordinance establishing the Cary Convention and Visitor Commission. The Commission shall be governed by a Board of Directors consisting of five members appointed by the Cary Town Council as follows:

- (1) At least one owner or operator of hotels, motels, or other taxable accommodations;
- (2) At least one person directly involved in a tourist- or convention-related business who does not own or operate a hotel, motel, or other taxable accommodation;
- (3) At least one resident of Cary who is not directly involved in a tourist or convention-related business and who does not own or operate a hotel, motel, or other taxable accommodations; and
- (4) At least one individual who is a member of the Cary Chamber of Commerce, selected by the Chairman of the Board of Directors of the Cary Chamber of Commerce.

Members shall be appointed by the town council and shall serve according to the ordinances and regulations of the town concerning service on the board of directors.

(g) Powers and Duties of Commission. The Cary Convention and Visitor Commission may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions. The Commission shall prepare an annual budget based on anticipated revenues and shall submit the budget to the Cary Town Manager for processing and approval through the regular budget procedure of the town. The Commission shall make quarterly reports

to the town detailing its revenues, expenditures, and activities. The town may audit the Commission's financial records upon reasonable notice to the Commission. At the end of each fiscal year, any funds of the Commission not expended, and not obligated or reserved as approved by the town council, shall be remitted to the Town of Cary for use in accordance with subdivision (e)(2).

(h) **Effective Date of Levy.** A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(i) **Repeal.** A tax levied under this act may be repealed by a resolution adopted by the Cary Town Council. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. **Effect of County Tax on Previously Levied Town Tax.** If the Town of Cary levies an occupancy tax under Section 1 of this act, and the Wake County Board of Commissioners subsequently adopts a resolution levying an occupancy tax in Wake County, the occupancy tax levied by the town shall be repealed as of the effective date of the county levy if the county levies an occupancy tax at the rate of three percent (3%), and shall otherwise be reduced by the amount that the combined county and town occupancy tax rates exceed three percent (3%) if the county rate is less than three percent (3%).

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

H.B. 2087

CHAPTER 875

AN ACT TO ALLOW THE TOWN OF SUNSET BEACH TO MAKE SPECIAL ASSESSMENTS FOR UNDERGROUNDING OF CABLE TELEVISION LINES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-216(1a), as it applies to the Town of Sunset Beach by virtue of Chapter 954, Session Laws of 1987, reads as rewritten:

"(1a) The placement of electric power and cable television lines underground."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

H.B. 2158

CHAPTER 876

AN ACT ALLOWING CONSTRUCTION OF AN ELEMENTARY
SCHOOL IN BERTIE COUNTY USING THE DESIGN-BUILD
CONTRACT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any provision of law or administrative rules to the contrary, the Bertie County Board of Education may plan, develop and construct a proposed elementary school building using the design-build contract system. The provisions of G.S. 143-128(c) and G.S. 143-128(d) shall apply to this project.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

H.B. 2186

CHAPTER 877

AN ACT TO AMEND THE LAWS RELATING TO THE
REGULATION OF PROPRIETARY SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-87 reads as rewritten:

" § 115D-87. *Definitions.*

As used in this Article:

- (1) 'Correspondence school' means an educational institution privately owned and operated by an owner, partnership or corporation conducted for the purpose of providing, by correspondence, for a consideration, profit, or tuition, systematic instruction in any field or teaches or instructs in any subject area through the medium of correspondence between the ~~pupil~~ student and the school, usually through printed or typewritten matter sent by the school and written responses by the ~~pupil~~ student.
- (2) 'Persons' means any individual, association, partnership or corporation, and includes any receiver, referee, trustee, executor, or administrator as well as a natural person.
- (3) '~~Private Proprietary~~ business school' or 'business school' or '~~school~~' means an educational institution that (i) is privately

owned and operated by an owner, partnership or corporation, ~~offering and (ii) offers business and office related courses for which tuition is charged, in such subjects as typewriting, manual or machine shorthand, filing and indexing, receptionist's duties, key-punch, teletype, penmanship, bookkeeping, accounting, office machines, business arithmetic, English, business letter writing, salesmanship, personality development, leadership training, public speaking, real estate, insurance, traffic management, business psychology, economics, business management, subjects of a similar character business or office related subjects or subjects of general education when they contribute value to the objective of the course of study. Classes in any of the subjects herein referred to which are taught or coached in homes or elsewhere to five or less students are not included in the term "school" and shall be exempt from the requirements of this Article. If a school offers classes in more than one county, the school's operations in each such county shall constitute a separate school, as defined in this subdivision.~~

- (4) 'Private Proprietary trade school' or 'trade school' means an educational institution that (i) is privately owned and operated by an owner, partnership or corporation, ~~offering and (ii) offers~~ classes conducted for the purpose of teaching, for profit or for a tuition charge, any trade, ~~technical, mechanical or industrial occupation or teaching any or several of the subjects needed to train youths or adults in the skills, technical knowledge, knowledge and subjects, related industrial information, and job judgment, necessary for success in one or more skilled trades, industrial occupations or related occupations. If a school offers classes in more than one county, the school's operations in each such county shall constitute a separate school, as defined in this subdivision.~~
- (5) 'Proprietary technical school', 'technical school', 'proprietary technical institute', or 'technical institute' means an educational institution that (i) is privately owned and operated by an owner, partnership or corporation, and (ii) offers classes conducted for the purpose of teaching, for profit or for a tuition charge, any technical occupation or teaching any or several of the subjects needed to train youths or adults in the skills, technical knowledge and subjects, related information, and job judgment, necessary for success in one or more technical or related occupations. If a school

offers classes in more than one county, the school's operations in each such county shall constitute a separate school, as defined in this subdivision."

Sec. 2. G.S. 115D-88 reads as rewritten:

"§ 115D-88. *Exemptions.*

It is the purpose of this Article to include all private schools operated for profit: Provided, that the following schools shall be exempt from the provisions of this Article:

- (1) Nonprofit schools conducted by bona fide eleemosynary or religious institutions.
- (2) Schools maintained or classes conducted by employers for their own employees where no fee or tuition is ~~charged~~, charged to the student.
- (3) Courses of instruction given by any fraternal society, civic club, or benevolent order, which courses are not operated for profit.
- (4) Any school for which there is another legally existing licensing or approving board or agency in this State.
- (4a) Classes or schools that are equipment-specific to purchasers, users, classes, or schools offering training or instruction to acquaint purchasers or users with equipment capabilities.
- (4b) Classes or schools that are taught or coached in homes or elsewhere to five or fewer students.
- (4c) Classes or schools that the State Board, acting by and through the President of the Community College System, determines are avocational, recreational, self-improvement, or continuing education for already trained and occupationally qualified individuals.
- (5) Any established university, professional, or liberal arts college, public or private ~~high school approved by the Department of Public Instruction,~~ regulated or recognized pursuant to Chapter 115C of the General Statutes or by any other State Agency, or any State institution which has heretofore offered, or which may hereinafter offer one or more courses covered in this Article: Provided, that the tuition fees and charges, if any, made by such university, college, high school, or State institution shall be collected by their regular officers in accordance with the rules ~~and regulations~~ prescribed by the board of trustees or governing body of such university, college, high school, or State institution; but provisions of the Article shall apply to all business schools, proprietary trade schools, proprietary technical schools, or correspondence schools ~~or branch~~

~~schools~~, as defined in this Article, and operated within the State of North Carolina as such institutions, except schools for which there are other legally existing licensing boards or agencies."

Sec. 3. G.S. 115D-89 reads as rewritten:

"§ 115D-89. *State Board of Community Colleges to administer Article; issuance of diplomas by schools; investigation and inspection; ~~regulations and standards, rules.~~*

(a) The State Board of Community Colleges, acting by and through the President of the ~~Department of Community Colleges, Community College System,~~ shall have authority to administer and enforce this Article and to grant and issue licenses to private schools and educational institutions, as the same are defined herein, proprietary business schools, proprietary trade schools, proprietary technical schools, and correspondence schools, whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the State and which have met the standards set forth by the Board, including but not limited to course offerings, adequate facilities, financial stability, competent personnel and legitimate operating practices.

(b) Any such ~~private school or educational institution, proprietary business school, proprietary trade school, proprietary technical school, or correspondence school,~~ may by and with the approval of the State Board issue certificates and diplomas.

(c) The State Board, acting by and through the President of the ~~Department of Community Colleges, Community College System,~~ shall formulate the criteria and the standards evolved thereunder for the approval of such schools or educational institutions, provide for adequate investigations of all schools applying for a license and issue licenses to those applicants meeting the standards fixed by the Board, maintain a list of schools approved under the provisions of this Article which list shall be available for the information of the public, and provide for periodic inspection of all schools licensed under the provisions of this Article. Through periodic reports required of licensed schools ~~or branch schools~~ and by inspections made by authorized representatives of the State Board of Community Colleges, the State Board of Community Colleges shall have general supervision over business, ~~trade~~ trade, technical, and correspondence schools in the State, the object of said supervision being to protect the health, safety and welfare of the public by having the licensed business, ~~trade~~ trade, technical, and correspondence schools maintain adequate, safe and sanitary school quarters, sufficient and proper facilities and equipment, sufficient and qualified teaching and administrative staff, and satisfactory programs of operation and instruction, and to have the

school carry out its advertised promises and contracts made with its students and patrons. To this end the State Board of Community Colleges is authorized to issue such ~~regulations and standards~~ rules not inconsistent with the provisions of this Article as are necessary to administer the provisions of this Article.

The State Board, acting by and through the President of the Community College System, may request any occupational licensing or approving board or agency in this State to adopt rules requiring the approval of that board or agency for a course of study. Under these rules, the board or agency shall pass on the adequacy of equipment, curricula, and instructional personnel. The State Board of Community Colleges may deny approval to a course of study that is not approved by such board or agency."

Sec. 4. G.S. 115D-90 reads as rewritten:

"§ 115D-90. License required; application for license; school bulletins; requirements for issuance of license; license restricted to courses indicated; supplementary applications.

(a) No person shall operate, conduct or maintain or offer to operate in this State a ~~private school or educational institution as defined herein~~ proprietary trade school, proprietary technical school, proprietary business school, or correspondence school, unless a license is first secured from the State Board of Community Colleges ~~issued~~ granted in accordance with the provisions of this Article and the rules ~~and regulations promulgated~~ adopted by the Board under the authority of G.S. ~~115C-570~~ 115D-89. The license, when issued, shall constitute the formal acceptance by the Board of the educational programs and facilities of each ~~private~~ school approved.

(b) Application for a license shall be filed in the manner and upon the forms prescribed and furnished by the President of the ~~Department of Community Colleges~~ Community College System for that purpose. Such application shall be signed by the applicant and properly verified and shall contain such of the following information as may apply to the particular school ~~or branch school~~, for which a license is sought:

- (1) The title or name of the school or classes, together with the name and address of the owners and of the controlling officers thereof.
- (2) The general field of instruction.
- (3) The place or places where such instruction will be given.
- (4) A specific listing of the equipment available for instruction in each field.
- (5) The qualifications of instructors and supervisors.
- (6) Financial resources available to equip and to maintain the school or classes.

- (7) Such additional information as the State ~~Board~~ Board, acting by and through the President of the Community College System, may deem necessary to enable it to determine the adequacy of the program of instruction and matters pertaining thereto. Each application shall be accompanied by a copy of the current bulletin or catalog of the school which shall be in published form and certified by an authorized official of the school as being ~~true—~~ current, true, and correct in content and policy. The school bulletin shall contain the following information:
- a. Identifying data, such as volume number and date of publication.
 - b. Names of the institution and its governing body, officials and faculty.
 - c. A calendar of the institution showing legal holidays, beginning and ending date of each quarter, term or semester, and other important dates.
 - d. Institution's policy and regulations relative to leave, absences, class cuts, make-up work, tardiness and interruptions for unsatisfactory attendance.
 - e. Institution's policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course.
 - f. Institution's policy and regulations relative to standards of progress required of the student by the institution. This policy will define the grading system of the institution; the minimum grades considered satisfactory; conditions for interruption for unsatisfactory grades or progress and description of the probationary period, if any, allowed by the institution; and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student.
 - g. Institution's policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.
 - h. Detailed schedule for fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges.
 - i. Policy and regulations of the institution relative to the refund of the unused portion of tuition, fees and other charges in the event the student does not enter the course or withdraws or is discontinued therefrom.

- j. A description of the available space, facilities and equipment.
- k. A course outline for each course for which approval is requested, showing showing:
 - 1. ~~subjects~~ Subjects or units in the course.
 - 2. ~~type~~ Type of skill ~~or skill~~ to be learned, and
 - 3. ~~approximate time and~~ Approximate (i) time; (ii) clock ~~hours~~ hours, and (iii) credit hours ~~or credit hours~~ equivalent, as appropriate, to be spent on each subject or unit.
- l. Policy and regulations of the institution relative to granting credit for previous educational training.

(c) After due investigation and consideration on the part of the State Board ~~Board~~, acting by and through the President of the Community College System, as provided herein, a license shall be ~~issued~~ granted to the applicant when it is shown to the satisfaction of said Board that said applicant, school, programs of study or courses are found to have met the following criteria:

- (1) The courses, curriculum and instruction are consistent in quality, content and length with similar courses in public schools and other private schools in the State, with recognized accepted standards.
- (2) There is in the institution adequate space, equipment, instructional material and instructor personnel to provide training of good quality.
- (3) Education and experience qualifications of director, administrators and instructors are adequate.
- (4) The institution maintains a written record of the previous education and training of the student.
- (5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to absences, grading policy and rules of operation and conduct will be furnished the student upon enrollment.
- (6) Upon completion of training, the student is given a certificate or diploma by the institution indicating the approved course or subjects and indicating that training was satisfactorily completed.
- (7) Adequate records as prescribed by the State Board of Community Colleges ~~Colleges~~, acting by and through the President of the Community College System, are kept to show attendance and progress or grades and satisfactory standards relating to attendance, progress and conduct are enforced.

- (8) The school complies with all local, city, county, municipal, State and federal regulations, such as fire codes, building and sanitation codes. The State Board of Community Colleges may require such evidence of compliance as is deemed necessary.
- (9) The school is financially sound and capable of fulfilling its commitments for training.
- (10) The school does not exceed its enrollment limitation as established by the State Board of Community Colleges.
- (11) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission or intimation.
- (12) The school's administrators, directors, owners and instructors are of good reputation and character.
- (13) Such additional criteria as may be deemed necessary by the State Board.

(d) Any license issued shall be restricted to the programs of instruction or courses or subjects specifically indicated in the application for a license. The holder of a license shall present a supplementary application as may be directed by the President of the ~~Department of Community Colleges~~ Community College System for approval of additional programs of ~~instruction or courses~~ instruction, courses, or subjects, in which it is desired to offer instruction during the effective period of the license."

Sec. 5. G.S. 115D-91 reads as rewritten:

"§ 115D-91. *Duration and renewal of licenses; notice of change of ownership, administration, etc.; license not transferable.*

(a) All licenses issued shall expire on June 30 next following the date of issuance.

(b) Licenses shall be renewable annually on July 1: Provided, an application for the renewal of the license has been filed in the form and manner prescribed by the State ~~Board~~ Board, acting by and through the President of the Community College System, and the renewal fee has been paid: Provided, further that the school and its courses, facilities, faculty and all other operations are found to meet the criteria set forth in the requirements for a school to secure an original license.

(c) After a license is ~~issued~~ granted to any school by the State Board of Community Colleges on the basis of its application, it shall be the responsibility of said school to notify immediately said Board of any changes in the ownership, administration, location, faculty, the instructional program or other changes as may affect significantly the course of instruction offered.

(d) In the event of the sale of such school, the license already granted to the original owner or operators thereof shall not be transferable to the new ownership or operators. Provided, however, the President of the Community College System may issue a 90-day, temporary operating license to a school upon its sale if the school held a valid, current license prior to the sale, and if the President finds that the school is likely to qualify after the sale for a license under this Article."

Sec. 6. G.S. 115D-92 reads as rewritten:

"§ 115D-92. Authority to establish fees; Commercial Education Fund established; refund of fees.

The State Board of Community Colleges shall establish reasonable fees for licenses, renewals, and approvals granted, and for inspections performed pursuant to this Article.

The fees and licenses collected under this section shall be placed in a special fund to be designated the 'Commercial Education Fund' and shall be used under the supervision and direction of the State Board of Community Colleges for the administration of this Article. No license fee shall be refunded in the event the application is rejected or the license suspended or revoked."

Sec. 7. G.S. 115D-93 reads as rewritten:

"§ 115D-93. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds.

(a) A refusal to issue, refusal to renew, suspension of, or revocation of a license under this section shall be made in accordance with Chapter 150B of the General Statutes.

(b) A decision under this section to refuse to grant, refuse to renew, suspend, or revoke a license is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.

(c) The State Board, acting by and through the President of the Department of Community Colleges, Community College System, shall have the power to refuse to issue or renew any such license and to suspend or revoke any such license theretofore issued in case it finds one or more of the following:

- (1) That the applicant for or holder of such a license has violated any of the provisions of this Article or any of the rules ~~and regulations~~ promulgated thereunder.
- (2) That the applicant for or holder of such a license has knowingly presented to the State Board of Community Colleges false or misleading information relating to ~~approval~~, approval or license.
- (3) That the applicant for or holder of such a license has failed or refused to permit authorized representatives of the State Board of Community Colleges to inspect the school, or has

refused to make available to them at any time upon request full information pertaining to matters within the purview of the State Board of Community Colleges under the provisions of this Article.

- (4) That the applicant for or holder of such a license has perpetrated or committed fraud or deceit in advertising the school or in presenting to the prospective students written or oral information relating to the school, to employment opportunities, or to opportunities for enrollment in other institutions upon completion of the instruction offered in the school.
- (5) That the applicant or licensee has pleaded guilty, entered a plea of *nolo contendere* or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court.
- (6) That the applicant or licensee has failed to provide or maintain premises, equipment or conditions which are adequate, safe and sanitary, in accordance with such standards of the State of North Carolina or any of its political subdivisions, as are applicable to such premises and equipment.
- (7) That the licensee is employing teachers, supervisors or administrators who have not been approved by the State ~~Board.~~ Board, acting by and through the President of the Community College System.
- (8) That the licensee has failed to provide and maintain adequate premises, equipment, materials or supplies, or has exceeded the maximum enrollment for which the school or class was licensed.
- (9) That the licensee has failed to provide and maintain adequate standards of instruction or an adequate and qualified administrative, supervisory or teaching staff."

Sec. 8. G.S. 115D-96 reads as rewritten:

"§ 115D-96. *Operating school without license or bond made misdemeanor.*

Any person, or each member of any association of persons or each officer of any corporation who opens and conducts a proprietary business school, a proprietary technical school, a proprietary trade school ~~school, or a correspondence school, or branch school as defined in this Article,~~ without first having obtained the license herein required, and without first having executed the bond required, shall be guilty of a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) or 30 days imprisonment, or both, at the discretion of the

court, and each day said school continues to be open and operated shall constitute a separate offense."

Sec. 9. G.S. 115D-97 reads as rewritten:

"§ 115D-97. *Contracts with unlicensed schools and evidences of indebtedness made null and void.*

All contracts entered into by proprietary business, trade proprietary technical, proprietary trade, or correspondence schools, or branch school, as defined in this Article, with students or prospective students, and all promissory notes or other evidence of indebtedness taken in lieu of cash payments by such schools shall be null and void unless such schools are duly licensed as required by this Article."

Sec. 10. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

H.B. 2201

CHAPTER 878

AN ACT TO EXCLUDE FROM THE CORPORATE LIMITS OF
THE TOWN OF LAUREL PARK AN AREA RECENTLY
DISCOVERED TO BE WITHIN THOSE LIMITS.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 100, Private Laws of 1925, is amended by adding the following new language at the end:

"Excluded from those limits is the following described tract: BEGINNING at an existing iron pin in the western margin of Stepp Avenue, State Road 1159, said iron pin also being the northeastern corner of that property as conveyed to Shirley Kilpatrick in Deed Book 397, Page 441 of the Henderson County Registry and runs thence from said BEGINNING POINT North 82 deg. 27 min. 45 sec. West 264.00 feet to an iron pin set replacing stones as the northwest corner of the old Henry Justice tract approximately South 06 deg. 26 min. 14 sec. West 330.19 feet and South 07 deg. 40 min. 14 sec. West 227.52 feet from a concrete monument control corner and runs thence with the line of the Hendersonville Country Club, Inc. property North 06 deg. 02 min. 14 sec. East 576.66 feet to an existing iron pin; thence with the line of Golf View Homeowners Association as recorded in Deed Book 629, Page 329 of the Henderson County Registry South 85 deg. 00 min. 00 sec. East 264.00 feet to an existing iron pin in the margin of Stepp Avenue; thence with the western margin of Stepp Avenue South 06 deg. 02 min. 31 sec. West 588.35 feet to the point and place of BEGINNING according to a Survey by William G. Bradley, Job No. 90-47."

Sec. 2. This act shall become effective from and after February 28, 1925.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

H.B. 2220

CHAPTER 879

AN ACT TO ESTABLISH FOX SEASONS IN ANSON AND STANLY COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, there is a season for taking, hunting, or killing foxes with weapons from November 18 through January 1 of each year.

Sec. 2. Notwithstanding any other provision of law, there is a season for taking foxes with foothold traps from January 2 through January 31 of each year.

Sec. 3. The Wildlife Resources Commission shall provide for the sale of foxes taken lawfully pursuant to this act.

Sec. 4. A season bag limit of 30 applies in the aggregate to all foxes taken during the fox seasons established in this act for Anson County. A season bag limit of 10 applies in the aggregate to all foxes taken during the fox seasons established in this act for Stanly County.

Sec. 5. This act shall apply only to Anson and Stanly Counties.

Sec. 6. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

H.B. 2282

CHAPTER 880

AN ACT TO ENCOURAGE RECYCLING OF FOOD PROCESSING BY-PRODUCTS AND TO REQUIRE REPORTS FROM THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES CONCERNING THE LAND APPLICATION OF FOOD PROCESSING BY-PRODUCTS.

The General Assembly of North Carolina enacts:

Section 1. Within 90 days of the effective date of this act, the Environmental Management Commission shall initiate rule-making proceedings to allow the by-products of food processing, food manufacturing, or fermentation processes to be designated by some name other than "sludge" in permits for land application issued pursuant to G.S. 143-215.1.

Sec. 2. The Secretary of the Department of Environment, Health, and Natural Resources shall review and make determinations concerning the following:

- (1) The permit process for nondischarge permits generally and nondischarge permits for the land application of food wastes. The Secretary shall determine whether such permits can be issued in a shorter period of time.
- (2) The regulatory criteria and permit conditions applicable to the nondischarge of wastes. The Secretary shall propose which criteria and permit conditions may be appropriately altered for the land application of food wastes in order to increase the availability of application sites, expedite the permit application development process, and to recognize other appropriate distinguishing characteristics of food wastes.
- (3) The impact of the nondischarge regulations and permits on the need for emergency disposal of food wastes. The Secretary shall determine what constitutes an emergency disposal need and shall recommend the appropriate methods or regulatory criteria to meet those needs on a timely basis.

Sec. 3. The Secretary, in consultation with the Department of Agriculture, the North Carolina Agricultural Extension Service, a land application contractor, and the North Carolina Water Pollution Control Federation, shall report his preliminary findings and recommendations to the Legislative Research Commission no later than November 1, 1990, by filing copies of the report with the chairmen of the Commission's Agribusiness Plant Variance Study Committee. A final report shall be made to the General Assembly on or before the first day of the convening of the 1991 General Assembly by filing copies with the President of the Senate, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

S.B. 1354

CHAPTER 881

AN ACT TO REGULATE REFUND ANTICIPATION LOANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-166 reads as rewritten:

"§ 53-166. *Scope of Article; evasions; penalties; loans in violation of Article void.*

(a) Scope. -- No person shall engage in the business of lending in amounts of ten thousand dollars (\$10,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner; ~~Provided further, no person shall in the course of any business service individually or in conjunction or cooperation with any bank or other lender process or accept for delivery to any bank or other lender any loan application, or receive or accept for delivery any loan proceed checks or in any manner facilitate the extension of credit the purpose of which is to fund a loan in anticipation of any sums of money due by reason of a tax refund without first having obtained a license from the Commissioner.~~ Commissioner. The word 'lending' as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. -- The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge or pretense whatsoever.

(c) Penalties; Commissioner to Provide and Testify as to Facts in His Possession. -- Any person not exempt from this Article, or any officer, agent, employee or representative thereof, who fails to comply with or who otherwise violates any of the provisions of this Article, or any regulation of the Banking Commission adopted pursuant to this Article, shall be guilty of a misdemeanor and upon conviction shall be fined not less than five hundred dollars (\$500.00) nor more than twenty-five hundred dollars (\$2,500) or imprisoned not less than four months nor more than two years, or both, in the discretion of the court. Each such violation shall be considered a separate offense. It shall be the duty of the Commissioner of Banks to provide the district attorney of the court having jurisdiction of any such offense with all facts and evidence in his actual or constructive possession, and to testify as to such facts upon the trial of any person for any such offense.

(d) Additional Penalties. -- Any contract of loan, the making or collecting of which violates any provision of this Article, or regulation thereunder, except as a result of accidental or bona fide error of computation shall be void and the licensee or any other party in violation shall have no right to collect, receive or retain any principal or charges whatsoever with respect to such loan. If an affiliate operating in the same office or subsidiary operating in the same office

of a licensee makes a loan in violation of G.S. 53-180(i) such affiliate or subsidiary may recover only its principal on such loan."

Sec. 2. Chapter 53 of the General Statutes is amended by adding at the end a new Article to read:

"ARTICLE 20.

"Refund Anticipation Loan Act.

" § 53-245. Title and scope.

(a) Title. This Article shall be known and cited as the 'Refund Anticipation Loan Act'.

(b) Scope. No person may individually or in conjunction or cooperation with another person process, receive, or accept for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitate the making of a refund anticipation loan unless the person has complied with the provisions of this Article. In addition, G.S. 143-3.3 prohibits refund anticipation loans repaid from refunds of North Carolina tax.

" § 53-246. Definitions.

The following definitions apply in this Article:

- (1) Applicant. A person who applies for registration as a facilitator of refund anticipation loans.
- (2) Commission. The State Banking Commission.
- (3) Commissioner. The Commissioner of Banks.
- (4) Creditor. A person who makes a refund anticipation loan.
- (5) Debtor. A person who receives the proceeds of a refund anticipation loan.
- (6) Facilitator. A person who individually or in conjunction or cooperation with another person processes, receives, or accepts for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitates the making of a refund anticipation loan.
- (7) Person. An individual, a firm, a partnership, an association, a corporation, or another entity.
- (8) Refund anticipation loan. A loan that the creditor arranges to be repaid directly from the proceeds of the debtor's income tax refund.
- (9) Refund anticipation loan fee. The charges, fees, or other consideration charged or imposed by the creditor or facilitator for the making of a refund anticipation loan. This term does not include any charge, fee, or other consideration usually charged or imposed by the facilitator in the ordinary course of business for nonloan services.

such as fees for tax return preparation and fees for electronic filing of tax returns.

- (10) Registrant. A person who is registered as a facilitator of refund anticipation loans under this Article.

" § 53-247. Registration requirement.

(a) Registration Requirement. No person may individually or in conjunction or cooperation with another person process, receive, or accept for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds without first being registered with the Commissioner in accordance with the registration procedure provided in this Article.

(b) Criminal Penalty. Violation of this section is a misdemeanor, punishable by imprisonment up to 60 days, a fine of up to two thousand dollars (\$2,000), or both.

(c) Exemption. This section does not apply to a person doing business as a bank, savings association, or credit union, under the laws of this State or the United States.

" § 53-248. Registration procedure.

(a) Initial Registration. An application to become registered as a facilitator shall be in writing, under oath, and in a form prescribed by the Commissioner. The application shall contain all information prescribed by the Commissioner. Each application for registration shall be accompanied by a fee, payable to the Commissioner, of two hundred fifty dollars (\$250.00) for each office where the registrant intends to facilitate refund anticipation loans.

Upon the filing of an application for registration, if the Commissioner finds that the responsibility and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business of facilitating refund anticipation loans will be operated within the purposes of this Article, the Commissioner shall register the applicant as a facilitator of refund anticipation loans and shall issue and transmit to the applicant a certificate attesting to the registration. If the Commissioner does not so find, he shall not register the applicant and shall notify the applicant of the reasons for the denial.

Upon receipt of a certificate of registration, the applicant is registered under this Article and may engage in the business of facilitating refund anticipation loans at the offices identified on the application for registration.

(b) Renewal. Each registration as a facilitator of refund anticipation loans shall expire on December 31 following the date it was issued, unless it is renewed for the succeeding year. Before the registration expires, the registrant may renew the registration by filing with the Commissioner an application for renewal in the form and

containing all information prescribed by the Commissioner. Each application for renewal of registration shall be accompanied by a fee of one hundred dollars (\$100.00) for each office where the registrant intends to facilitate refund anticipation loans during the succeeding year.

Upon the filing of an application for renewal of registration under this Article, the Commissioner shall renew the registration unless the Commissioner determines that the fitness of the registrant or the operations of the registrant would not support registration of the registrant under subsection (a). If the Commissioner makes such a determination, he shall so notify the registrant, stating the reasons for the determination.

(c) Display of Certificate. Each registrant shall prominently display a certificate issued under this Article in each place of business in the State where the registrant facilitates the making of refund anticipation loans.

" § 53-249. Filing and posting of loan fees; disclosures.

(a) Filing of Fee Schedule. On or before January 2 of each year, each registrant shall file with the Commissioner a schedule of the refund anticipation loan fees for refund anticipation loans to be facilitated by the registrant during the succeeding year. Immediately upon learning of any change in the refund anticipation loan fee for that year, the registrant shall file an amendment with the Commissioner setting out the change. Filing is effective upon receipt by the Commissioner.

(b) Notice of Unconscionable Fee. If the Commissioner finds that a refund anticipation loan fee filed pursuant to subsection (a) is unconscionable, he shall notify the registrant that (i) in his opinion the fee is unconscionable and (ii) the consequences of charging a refund anticipation loan fee in an amount that the Commissioner has notified the registrant is unconscionable include liability to the debtor for three times the amount of that fee and possible revocation of registration as a facilitator after notice and a hearing.

(c) Posting of Fee Schedule. Every registrant shall prominently display at each office where the registrant is facilitating refund anticipation loans a schedule showing the current refund anticipation loan fees for refund anticipation loans facilitated at the office and the current electronic filing fees for the electronic filing of the taxpayer's tax return. Every registrant shall also prominently display on each fee schedule a statement to the effect that the taxpayer may have the tax return filed electronically without also obtaining a refund anticipation loan. No registrant may facilitate a refund anticipation loan unless (i) the schedule required by this subsection is displayed and (ii) the refund anticipation loan fee actually charged is the same as the fee

displayed on the schedule and the fee filed with the Commissioner pursuant to subsection (a).

(d) Disclosures. At the time a debtor applies for a refund anticipation loan, the registrant shall disclose to the debtor on a form separate from the application:

- (1) The fee for the loan.
- (2) The fee for electronic filing of a tax return.
- (3) The time within which the proceeds of the loan will be paid to the debtor if the loan is approved.
- (4) That the debtor is responsible for repayment of the loan and related fees in the event the tax refund is not paid or is not paid in full.
- (5) The availability of electronic filing of the taxpayer's tax return, along with the average time announced by the appropriate taxing authority within which a taxpayer can expect to receive a refund if the taxpayer's return is filed electronically and the taxpayer does not obtain a refund anticipation loan.
- (6) Examples of the annual percentage rates, as defined by the Truth In Lending Act, 15 U.S.C. § 1607 and 12 C.F.R. Section 226.22, for refund anticipation loans of five hundred dollars (\$500.00), seven hundred fifty dollars (\$750.00), one thousand dollars (\$1,000), one thousand five hundred dollars (\$1,500), two thousand dollars (\$2,000), and three thousand dollars (\$3,000). Regardless of disclosures of the annual percentage rate required by the Truth In Lending Act, if the debtor is required to establish or maintain a deposit account with the creditor for receipt of the debtor's tax refund to offset the amount owed on the loan, the maturity of the loan for the purpose of determining the annual percentage rate disclosure under this section shall be assumed to be the estimated date when the tax refund will be deposited in the debtor's account.

" § 53-250. Prohibited activities.

A facilitator of a refund anticipation loan may not engage in any of the following activities:

- (1) Misrepresenting a material factor or condition of a refund anticipation loan.
- (2) Failing to arrange for a refund anticipation loan promptly after the debtor applies for the loan.
- (3) Engaging in any transaction, practice, or course of business that operates a fraud upon any person in connection with a refund anticipation loan.

- (4) Facilitating a refund anticipation loan for which the refund anticipation loan fee is (i) different from the fee posted or the fee filed with the Commissioner or (ii) in an amount that the Commissioner has notified the facilitator is unconscionable.
- (5) Directly or indirectly arranging for payment of any portion of the refund anticipation loan for check cashing, credit insurance, or any other good or service unrelated to (i) preparing and filing tax returns or (ii) facilitating refund anticipation loans.
- (6) Arranging for a creditor to take a security interest in any property of the debtor other than the proceeds of the debtor's tax refund to secure payment of the loan.

" § 53-251. Cease and desist; revocation of registration; penalties.

(a) Cease and Desist Order. Upon the finding that any action of a registrant may be in violation of this Article or that the registrant has engaged in an unfair or deceptive act or practice, the Commissioner shall give reasonable notice to the registrant of the suspected violation or unfair or deceptive act or practice, and an opportunity for the registrant to be heard. If, following the hearing, the Commissioner finds that an action of the registrant is in violation of this Article or that the registrant has engaged in an unfair or deceptive act or practice, the Commissioner shall order the registrant to cease and desist from the action.

If the registrant fails to appeal a cease and desist order of the Commissioner in accordance with G.S. 53-252 and continues to engage in an action in violation of the Commissioner's order to cease and desist from the action, the registrant shall be subject to a penalty of one thousand dollars (\$1,000) for each action it takes in violation of the Commissioner's order.

(b) Revocation of Registration. After notice and hearing, and upon the finding that a registrant has (i) engaged in a course of conduct that is in violation of this Article or (ii) continued to engage in an action in violation of a cease and desist order of the Commissioner that has not been stayed upon application of the registrant, the Commissioner may revoke the registration of the registrant temporarily or permanently in the discretion of the Commissioner.

(c) Civil Penalties. Except in the case of a refund anticipation loan that is not approved by the creditor, a facilitator who fails to deliver to the debtor the proceeds of a refund anticipation loan within 48 hours after the time period promised by the facilitator when the debtor applied for the loan shall pay to the debtor an amount equal to the refund anticipation loan fee. A facilitator who engages in an activity prohibited under G.S. 53-250 in connection with a refund anticipation

loan is liable to the debtor for damages of three times the amount of the refund anticipation loan fee or other unauthorized charge plus a reasonable attorney's fee.

" § 53-252. Appeal of Commissioner's decision.

Notwithstanding any other provision of law, an aggrieved party may, within 30 days after a final decision of the Commissioner and with written notice to the Commissioner, appeal the decision directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days after receipt of notice of appeal. The record shall include all memoranda and briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding except for material such as trade secrets normally not available through commercial publication for which a party has made a claim of confidentiality and requested exclusion from the record. All factual information contained in any report submitted to or obtained by the Commissioner's staff shall also be made a part of the record unless deemed confidential by the Commissioner.

" § 53-253. Rules; enforcement.

Notwithstanding the provisions of G.S. 53-95, the Commissioner may promulgate reasonable rules as necessary to effectuate the purpose of this Article, to provide for the protection of the borrowing public, and to assist registrants in interpreting this Article. In order to enforce this Article, the Commissioner may make investigations, subpoena witnesses, require audits and reports, and conduct hearings regarding possible violations of its provisions.

" § 53-254. Exemption.

This Article does not apply to a person who does not deal directly with debtors but who acts solely as an intermediary by processing or transmitting, electronically or otherwise, tax or credit information or by preparing for a facilitator refund anticipation loan checks to be delivered by the facilitator to the debtor."

Sec. 3. G.S. 53-99 reads as rewritten:

" § 53-99. Official records.

(a) The Commissioner of Banks shall keep a record in his office of his official acts, rulings, and transactions which, except as hereinafter provided, shall be open to inspection, examination and copying by any person.

(b) Notwithstanding any laws to the contrary, the following records of the Commissioner of Banks shall be confidential and shall not be disclosed or be subject to public inspection:

- (1) Records compiled during or in connection with an examination, audit or investigation of any bank, banking

- office, bank holding company or its nonbank subsidiary, or trust department which operates or has applied to operate under the provisions of this Chapter;
- (2) Records containing information compiled in preparation or anticipation of litigation, examination, audit or investigation;
 - (3) Records containing the names of any borrowers from a bank or revealing the collateral given by any such borrower: Provided, however, that every report of insider transactions made by a bank which report is required to be filed with the appropriate State or federal regulatory agency by either State or federal statute or regulation shall be filed with the Commissioner of Banks in a form prescribed by him and shall be open to inspection, examination and copying by any person;
 - (4) Records prepared during or as a result of an examination, audit or investigation of any bank, bank affiliate, bank holding company or its nonbank subsidiary, data service center or banking practice by an agency of the United States, or jointly by such agency and the Commissioner of Banks, if such records would be confidential under federal law or regulation;
 - (4a) Records prepared during or as a result of an examination, audit or investigation of any bank, bank affiliate, bank holding company or its nonbank subsidiary, data service center or banking practice by a regulatory agency of jurisdiction of the region defined in G.S. 53-210(11) if these records would be confidential under that jurisdiction's law or regulation;
 - (5) Records of information and reports submitted by banks to federal regulatory agencies, if such records would be confidential under federal law or regulation;
 - (6) Records of complaints from the public received by the banking department and concerning banks under its supervision if such complaints would or could result in an investigation;
 - (7) Records of examinations and investigations of consumer finance licensees;
 - (7a) Records of examinations and investigations of licensees under the Sale of Checks Act, Article 16 of this Chapter;
 - (7b) Records of examinations and investigations of registrants under the Mortgage Bankers and Brokers Act, Article 19 of this Chapter;

- (7c) Records of applications and investigations of registrants under the Refund Anticipation Loan Act, Article 20 of this Chapter;
- (8) Records of pre-need burial contracts maintained pursuant to Article 7A of Chapter 65 Article 13B of Chapter 90 of the General Statutes including investigations of such contracts and related credit inquiries;
- (9) Any letters, reports, memoranda, recordings, charts, or other documents which would disclose any information set forth in any of the confidential records referred to in subdivisions (1) through (8).

(c) Notwithstanding the provisions of subsection (b), the Commissioner of Banks may, by written agreement with any state or federal regulatory agency, share with that agency any confidential information set out in subsection (b) on the condition that the information shared shall be treated as confidential under the applicable laws and regulations governing the recipient agency."

Sec. 4. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 10th day of July, 1990.

H.B. 2040

CHAPTER 882

AN ACT TO REMOVE THE PERCENTAGE AREA LIMITATION ON VOLUNTARY SATELLITE ANNEXATIONS BY THE CITY OF STATESVILLE, AND TO MODIFY THAT LIMITATION AS TO THE TOWN OF WAKE FOREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) does not apply to the City of Statesville.

Sec. 2. (a) The provisions of G.S. 160A-58.1(b)(5) do not apply as to the Town of Wake Forest to any property:

- (1) For which a request for municipal utility service has been received consistent with the Town's Land Use Management Plan; and
- (2) Which is within the Wake Forest Perimunicipal Planning Area as shown on the map of Perimunicipal Planning Areas approved by Wake County.

(b) Except as provided by subsection (a) of this section, the provisions of Part 4 of Article 4A of Chapter 160A of the General Statutes shall continue to apply to the Town of Wake Forest.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1990.

H.B. 2080

CHAPTER 883

AN ACT CHANGING THE METHOD OF ELECTING THE TOWN
OF WILLIAMSTON BOARD OF COMMISSIONERS TO
IMPROVE THE OPPORTUNITY FOR MINORITY VOTERS TO
ELECT CANDIDATES OF THEIR CHOICE.

The General Assembly of North Carolina enacts:

Section 1. The Williamston Board of Commissioners shall consist of five members elected in nonpartisan, plurality elections for terms of two years. Elections shall be held at the time provided by State law and, except as otherwise provided in this act, shall be conducted according to general State law.

Sec. 2. Beginning with the 1991 election, one commissioner shall be elected from each of the three districts described in Section 4. Only the voters residing in a district may vote on the commissioner for that district, and only persons residing in the district shall be eligible to run for that office.

Sec. 3. Also beginning with the 1991 election, two commissioners shall be elected by all the voters of the town. All candidates for those two seats shall be listed together on a single ballot, but each voter shall be limited to voting for one candidate only. The two candidates receiving the most votes shall be elected.

Sec. 4. The election districts are as follows:

District 1 -- All of the town south of the following line running west to east from the western boundary of the town, including the area annexed in 1990: East and south along the Atlantic Coast Line Railroad tracks to U.S. Highway 17 bypass, then east along the bypass to the Roanoke River.

District 2 -- The central portion of town enclosed within the following line running clockwise from the intersection of Highway 125 with the town limits on the north side of town: South on Highway 125 (Haughton Street) to Williams Street, east on Williams to Park Street, south on Park to U.S. Highway 17 bypass, west on the bypass to the Atlantic Coast Line Railroad tracks, north and west along the railroad tracks to the town limits, east along the town limits to the starting point.

District 3 -- The remaining portion of town, which consists of all the town enclosed within the following line running counterclockwise from the intersection of Highway 125 with the town limits on the north side of town: South on Highway 125 (Haughton Street) to

Williams Street, east on Williams to Park Street, south on Park to U.S. Highway 17 bypass, east on the bypass to the Roanoke River, north and west from that point along the town limits to the starting point.

Sec. 5. Following each federal census and each annexation, the Board of Commissioners may, by adoption of a resolution, alter the district boundaries if necessary to comply with the requirements of equal representation. Any such change shall take effect with the next town election.

Sec. 6. Vacancies on the Board shall be filled as provided by general State law. If a vacancy occurs in one of the three district commissioner seats, the person appointed to fill the vacancy must reside in the district for which the vacancy occurred.

Sec. 7. The Mayor shall continue to be elected as a separate office by all the voters of the town, and shall continue to serve a term of two years.

Sec. 8. Chapter 90 of the Session Laws of 1947 is repealed.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1990.

H.B. 2100

CHAPTER 884

AN ACT TO VALIDATE THE 1989 ELECTION IN THE TOWN OF WATHA.

The General Assembly of North Carolina enacts:

Section 1. The election for municipal officers of the Town of Watha in 1989 is validated.

Sec. 2. Section 3 of Chapter 158, Private Laws of 1909, is rewritten to read:

"Sec. 3. The elected officers of the town shall be a mayor and three commissioners."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1990.

H.B. 2114

CHAPTER 885

AN ACT TO ALLOW BLADEN AND COLUMBUS COUNTIES TO ACQUIRE PROPERTY FOR USE BY THE BLADEN AND COLUMBUS COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158 reads as rewritten:

" § 153A-158. *Power to acquire property.*

A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the ~~county~~, county or a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A.

The county shall use its authority under this section to acquire the fee or any lesser interest in real or personal property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing."

Sec. 2. This act applies only to Bladen and Columbus Counties.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified the 10th day of July, 1990.

H.B. 2221

CHAPTER 886

AN ACT TO REVISE THE ELECTORAL SYSTEM FOR THE CLINTON CITY SCHOOL ADMINISTRATIVE UNIT TO REFLECT A CONSENT JUDGEMENT IN THE FEDERAL CASE OF HALL V. KENNEDY.

The General Assembly of North Carolina enacts:

Section 1. Effective beginning with the first regular meeting of the Clinton City Board of Education in July of 1990, that board consists of six members.

Sec. 2. Three members of the Clinton City Board of Education shall be elected in 1990 and quadrennially thereafter for four-year terms. Three members of the Clinton City Board of Education shall be elected in 1992 and quadrennially thereafter for four-year terms.

Sec. 3. The election shall take place at the same time as the primary election for county officers, shall be conducted on a nonpartisan basis, with the results determined by plurality in accordance with G.S. 163-292.

Sec. 4. At each election, all candidates for the three seats on the board shall be listed together on a single ballot, and each voter shall be instructed and allowed to vote for not more than one candidate.

Sec. 5. If a member of the board dies, resigns or otherwise leaves office, the remaining members shall appoint a person to fill the vacancy for the remainder of the unexpired term. A person appointed

to fill a vacancy may reside anywhere within the Clinton City School Administrative Unit.

Sec. 6. Newly elected board members shall take office at the first regular meeting in July following their election. At the first meeting of the newly elected board in 1990, and annually thereafter, the board shall choose one of its own members to chair the board for a one-year term. The member chosen to chair the board may vote on all matters coming before the board the same as any other members.

Sec. 7. Incumbent board members Bryant, Bell, and Woodall, whose terms do not expire in 1992, shall be entitled to serve the remainder of those terms.

Sec. 8. Except as provided by this act, the applicable provisions of Chapters 115C and 163 of the General Statutes shall continue to apply to elections of the Clinton City Board of Education.

Sec. 9. Chapter 317, Session Laws of 1975, is repealed.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1990.

H.B. 2222

CHAPTER 887

AN ACT TO REVISE THE ELECTORAL SYSTEM FOR THE CITY OF CLINTON TO REFLECT A CONSENT JUDGEMENT IN THE FEDERAL CASE OF HALL V. KENNEDY.

The General Assembly of North Carolina enacts:

Section 1. Chapter III of the Charter of the City of Clinton, being Chapter 943, Session Laws of 1985, reads as rewritten:

"CHAPTER III. GOVERNING BODY.

"Sec. 3-1. *Structure of Governing Body; Number of Members.* The governing body of the City of Clinton is the City Council, which has ~~four~~ five members, and the Mayor.

"Sec. 3-2. *Manner of Election of Council.* ~~The qualified voters of the entire City elect the members of the City Council.~~ The City shall be divided into five electoral districts from each of which one member of the City Council shall be elected by the qualified voters of said electoral district. The boundaries of each of said electoral districts are as established by Section 3-2.1 of this Charter, but the City Council from time to time may change those districts in a constitutionally acceptable manner.

"Sec. 3-2.1. *Electoral Districts.* Until changed in accordance with law, the five electoral districts are as follows:

- (1) District 1 -- The portion of the city within the following line running clockwise from the intersection of Beaman Street

and Eastover Avenue with College Street: Northwest on Beaman to Johnson Street, southwest on Johnson to Sampson Street, northwest on Sampson until it merges with McKoy Street, northwest on McKoy to Williams Mill Branch, southwest along the branch to the point where it intersects with the city limits, along the city limits to the point where the city limits intersect with Dixon Street (State Road 1749) on the northern side of the city, south on Dixon to North East Boulevard (U.S. Highway 701 Business), southeast along the boulevard to a point where Park Avenue would intersect with the boulevard if extended northerly in a straight line, from that point across to and along Park Avenue southeast to College Street, southwest on College to the beginning point.

- (2) District 2 -- The portion of the city within the following line running clockwise from the intersection of Beaman Street and Eastover Avenue with College Street: Northeast on College to Park Avenue, northwest on Park to its end, then directly across to the point where Park would intersect with North East Boulevard if extended in a straight line, northwest on the boulevard to Dixon Street (State Road 1749), north on Dixon to the point where the city limits intersect with that street, along the city limits to the point where the city limits intersect with Pugh Road (State Road 1751) on the eastern side of the city, south on Pugh to South East Boulevard (U.S. Highway 701 Business), south on the boulevard to Warsaw Road (N.C. Highway 24), west on Warsaw to Morisey Boulevard, southwest on Morisey to Eastover Avenue, northwest on Eastover to the beginning point.
- (3) District 3 -- The portion of the city within the following line running clockwise from the intersection of Beaman Street and Eastover Avenue with College Street: Southeast on Eastover to Morisey Boulevard, northeast on Morisey to Warsaw Road (N.C. Highway 24), east on Warsaw to South East Boulevard (U.S. Highway 701 Business), north on the boulevard to Pugh Road (State Road 1751), northeast on Pugh to the point where the city limits intersect with that street, along the city limits to the intersection with the Faircloth Freeway (U.S. Highways 421-701) on the southern side of town, west on Faircloth to Elizabeth Street, north on Elizabeth to Lisbon Street, northwest on Lisbon to Main Street, northeast on Main to College Street, northeast on College to the beginning point. This district also

includes the area of satellite annexation on Southwood Drive southeast of the city.

- (4) District 4 -- The portion of the city within the following line running clockwise from the intersection of Elizabeth Street and Chestnut and Ferrell streets: South on Elizabeth to the Faircloth Freeway (U.S. Highways 421-701), southeast on Faircloth to the point where the city limits intersects with the highway, along the city limits to the point where the city limits intersects with Williams Mill Branch on the western side of the city, northeast on the branch to Faircloth Freeway, southeast on Faircloth to Sunset Avenue, northeast on Sunset to Fayetteville Street, east on Fayetteville to Chestnut Street, southeast on Chestnut to the beginning point.
- (5) District 5 -- The portion of the city within the following line running clockwise from the intersection of Beaman Street and Eastover Avenue with College Street: Southwest on College to Main Street, southwest on Main to Lisbon Street, southeast on Lisbon to Elizabeth Street, southwest on Elizabeth to Chestnut Street, northwest on Chestnut to Fayetteville Street, west on Fayetteville to Sunset Avenue, southwest on Sunset to the Faircloth Freeway (U.S. Highways 421-701), north on Faircloth to Williams Mill Branch, northeast along the branch to McKoy Street, southeast on McKoy to the fork where Sampson Street begins, southeast on Sampson to Johnson Street, northeast on Johnson to Beaman Street, southeast on Beaman to the beginning point.

"Sec. 3-3. Term of Office of Members of the City Council. Members of the City Council are elected to four year terms. Any present members of the City Council serving under the Charter of the City of Clinton which has been superceded by this Charter prior to the consent decree in the case of Hall v. Kennedy, 88-117-CIV-3, United States District Court for the Eastern District of North Carolina, Fayetteville Division, shall continue to serve until the expiration of their present terms. Two members of the City Council shall be elected in 1987 for the two seats on the City Council the terms of which expire in 1987, and two members of the City Council shall be elected in 1989 for the two seats on the City Council the terms of which expire in 1989. The three members of the City Council elected in 1989 from Districts 1, 3, and 5 shall serve four-year terms, and their successors shall be elected in 1993 and quadrennially thereafter. Members of the City Council from Districts 2 and 4 shall be elected in 1991 and quadrennially thereafter for four-year terms.

"Sec. 3-4. *Election of Mayor; Term of Office.* The qualified voters of the entire city shall elect the Mayor. He is elected to a two-year term of office."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1990.

S.B. 58

CHAPTER 888

AN ACT TO PROVIDE FOR THE CREATION OF REGIONAL
SOLID WASTE MANAGEMENT AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 153A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 22.

"Regional Solid Waste Management Authorities.

" § 153A-421. Definitions; applicability; creation of authorities.

(a) Unless a different meaning is required by the context, terms relating to the management of solid waste used in this Article have the same meaning as in G.S. 130A-2 and in G.S. 130A-290. As used in this Article, the term 'solid waste' means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste or sludge.

(b) This Article shall not be construed to authorize any authority created pursuant to this Article to regulate or manage hazardous wastes or sludge.

(c) Any two or more units of local government may create a regional solid waste management authority by adopting substantially identical resolutions to that effect in accordance with the provisions of this Article. The resolutions creating a regional solid waste management authority and any amendments thereto are referred to in this Article as the 'charter' of the regional solid waste management authority. Units of local government which participate in the creation of a regional solid waste management authority are referred to in this Article as 'members'.

" § 153A-422. Purposes of an authority.

The purpose of a regional solid waste management authority is to provide environmentally sound, cost effective management of solid waste, including storage, collection, transporting, separation, processing, recycling, and disposal of solid waste in order to protect the public health, safety, and welfare; enhance the environment for the people of this State; and recover resources and energy which have the potential for further use and to encourage, implement and promote

the purposes set forth in Part 2A of Article 9 of Chapter 130A of the General Statutes.

" § 153A-423. Membership; board; delegates.

(a) Each unit of local government initially adopting a resolution under G.S. 153A-421 shall become a member of the regional solid waste management authority. Thereafter, any unit of local government may join the authority by ratifying its charter and by being admitted by a unanimous vote of the existing members. All of the rights and privileges of membership in a regional solid waste management authority shall be exercised on behalf of the member units of local government by a board composed of delegates to the authority who shall be appointed by and shall serve at the pleasure of the governing boards of their respective units of local government. A vacancy on the board shall be filled by appointment by the governing board of the unit of local government having the original appointment.

(b) Any delegate appointed by a member unit of local government to an authority created pursuant to this Article who is a county commissioner or city or town alderman or commissioner serves on the board of the authority in an ex officio capacity and such service shall not constitute the holding of an office for the purpose of determining dual office holding under Section 9 of Article VI of the Constitution of North Carolina or of Article 1 of Chapter 128 of the General Statutes.

" § 153A-424. Contents of charter.

(a) The charter of a regional solid waste management authority shall:

- (1) Specify the name of the authority;
- (2) Establish the powers, duties and functions that the authority may exercise and perform;
- (3) Establish the number of delegates to represent the member units of local government and prescribe the compensation and allowances, if any, to be paid to delegates;
- (4) Set out the method of determining the financial support that will be given to the authority by each member unit of local government; and
- (5) Establish a method for amending the charter, and for dissolving the authority and liquidating its assets and liabilities.

(b) The charter of a regional solid waste management authority may, but need not, contain rules for the conduct of authority business and any other matter pertaining to the organization, powers, and functioning of the authority that the member units of local government deem appropriate.

" § 153A-425. Organization of authorities.

The governing board of a regional solid waste management authority shall hold an initial organizational meeting at such time and place as is agreed upon by its member units of local government and shall elect a chairman and any other officers that the charter may specify or the delegates may deem advisable. The authority shall then adopt bylaws for the conduct of its business. All meetings of regional solid waste management authorities shall be subject to the provisions of Article 33C of Chapter 143 of the General Statutes.

" § 153A-426. *Withdrawal from an authority.*

If the authority has no outstanding indebtedness, any member may withdraw from a regional solid waste management authority effective at the end of the current fiscal year by giving at least six months notice in writing to each of the other members. Withdrawal of a member shall not dissolve the authority if at least two members remain.

" § 153A-427. *Powers of an authority.*

(a) The charter may confer on the regional solid waste management authority any or all of the following powers:

- (1) To apply for, accept, receive, and disburse funds and grants made available to it by the State or any agency thereof, the United States of America or any agency thereof, any unit of local government whether or not a member of the authority, any private or civic agency, and any persons, firms, or corporations;
- (2) To employ personnel;
- (3) To contract with consultants;
- (4) To contract with the United States of America or any agency or instrumentality thereof, the State or any agency, instrumentality, political subdivision, or municipality thereof, or any private corporation, partnership, association, or individual, providing for the acquisition, construction, improvement, enlargement, operation or maintenance of any solid waste management facility, or providing for any solid waste management services;
- (5) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties, not inconsistent with this Article;
- (6) To adopt an official seal and alter the same;
- (7) To establish and maintain suitable administrative buildings or offices at such place or places as it may determine by purchase, construction, lease, or other arrangements either by the authority alone or through appropriate cost-sharing arrangements with any unit of local government or other person;

- (8) To sue and be sued in its own name, and to plead and be impleaded;
- (9) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;
- (10) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;
- (11) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to any real or personal property or interest therein;
- (12) To pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign, or otherwise grant a security interest in any money, rents, charges, or other revenues and any proceeds derived by an authority from any and all sources;
- (13) To issue revenue bonds of the authority and enter into other financial arrangements including those permitted by this Chapter and Chapters 159, 159I, and 160A of the General Statutes to finance solid waste management activities, including but not limited to systems and facilities for waste reduction, materials recovery, recycling, resource recovery, landfilling, ash management, and disposal and for related support facilities, to refund any revenue bonds or notes issued by the authority, whether or not in advance of their maturity or earliest redemption date, or to provide funds for other corporate purposes of the authority;
- (14) With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;
- (15) To develop and make data, plans, information, surveys, and studies of solid waste management facilities within the territorial jurisdiction of the members of the authority, to prepare and make recommendations in regard thereto;
- (16) To study, plan, design, construct, operate, acquire, lease, and improve systems and facilities, including systems and facilities for waste reduction, materials recovery, recycling, resource recovery, landfilling, ash management, household hazardous waste management, transportation, disposal, and public education regarding solid waste management, in order to provide environmentally sound, cost-effective

management of solid waste including storage, collection, transporting, separation, processing, recycling, and disposal of solid waste in order to protect the public health, safety, and welfare; to enhance the environment for the people of this State; recover resources and energy which have the potential for further use, and to promote and implement the purposes set forth in Part 2A of Article 9 of Chapter 130A of the General Statutes;

- (17) To locate solid waste facilities, including ancillary support facilities, as the authority may see fit;
- (18) To assume any responsibility for disposal and management of solid waste imposed by law on any member unit of local government;
- (19) To operate such facilities together with any person, firm, corporation, the State, any entity of the State, or any unit of local government as appropriate and otherwise permitted by its charter and the laws of this State;
- (20) To set and collect such fees and charges as is reasonable to offset operating costs, debt service, and capital reserve requirements of the authority;
- (21) To apply to the appropriate agencies of the State, the United States of America or any state thereof, and to any other appropriate agency for such permits, licenses, certificates, or approvals as may be necessary, and to construct, maintain, and operate projects in accordance with such permits, licenses, certificates, or approvals in the same manner as any other person or operating unit of any other person;
- (22) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and such other consultants and employees as may be required in the judgment of the authority, to fix and pay their compensation from funds available to the authority therefor, to select and retain, subject to approval of the Local Government Commission, the financial consultants, underwriters, and bond attorneys to be associated with the issuance of any revenue bonds, and to pay for services rendered by financial consultants, underwriters, or bond attorneys from funds available to the authority including the proceeds of any revenue bond issue with regard to which the services were performed;
- (23) To acquire property located within the territorial jurisdiction of any member unit of local government by eminent domain pursuant to authority granted to counties;

(24) To require that any and all solid waste and recyclable materials generated within the authority's service area be separated and delivered to specific locations and facilities provided that if a private landfill shall be substantially affected by such requirement then the regional solid waste management authority shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the requirement; and

(25) To do all things necessary, convenient, or desirable to carry out the purposes and to exercise the powers granted to an authority under its charter.

(b) The acquisition and disposal of real and personal property by an authority created under this Article shall be governed by those provisions of the General Statutes which govern the acquisition and disposal of real and personal property by counties. No authority created pursuant to this Article shall exercise any power of eminent domain with respect to any property located outside the territorial jurisdiction of the members of such authority.

(c) Each authority's plan shall take into consideration facilities and other resources for management of solid waste which may be available through private enterprise. This Article shall be construed to encourage the involvement and participation of private enterprise in solid waste management.

" § 153A-428. Fiscal accountability; support from other governments.

(a) A regional solid waste management authority is a public authority subject to the provisions of Chapter 159 of the General Statutes.

(b) The establishment and operation of an authority as herein authorized are governmental functions and constitute a public purpose, and the State and any unit of local government may appropriate funds to support the establishment and operation of an authority.

(c) The State and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to an authority.

" § 153A-429. Long-term contract permitted by and with an authority.

(a) To the extent authorized by its charter, an authority may enter into long-term and continuing contracts, not to exceed a term of 60 years, with member or other units of local government for the acquisition, construction, improvement, enlargement, operation, or maintenance of any solid waste management facility or for solid waste management services with respect to solid waste generated within their geographic boundaries or brought into their geographic boundaries.

(b) Contracts entered into by an authority may include, but are not limited to, provisions for:

- (1) Payment by the members of the authority and other units of local government of a fee or other charge by the authority to accept and dispose of solid waste;
- (2) Periodic adjustments to the fee or other charges to be paid by each member of the authority and such other units of local government;
- (3) Warranties from the members of the authority and such other units of local government with respect to the quantity of the solid waste which will be delivered to the authority and warranties relating to the content or quality of the solid waste; and
- (4) Legal and equitable title to the solid waste passing to the authority upon delivery of the solid waste to the authority.

"§ 153A-430. Controlling provisions; compliance with other law.

(a) Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling.

(b) An authority created pursuant to this Article shall comply with all applicable federal and State laws, regulations, and rules, including specifically those enacted or adopted for the management of solid waste or for the protection of the environment or public health.

"§ 153A-431. Issuance of revenue bonds and notes.

The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, governs the issuance of revenue bonds by an authority. Article 9 of Chapter 159 of the General Statutes governs the issuance of notes in anticipation of the sale of revenue bonds.

"§ 153A-432. Advances.

Any member or other units of local government may make advances from any monies that may be available for such purpose, in connection with the creation of an authority and to provide for the preliminary expenses of an authority. Any such advances may be repaid to such member or other units of local government from the proceeds of the revenue bonds or anticipation notes issued by such authority or from funds otherwise available to the authority."

Sec. 2. G.S. 159I-3(13) reads as rewritten:

"(13) 'Unit of local government' or 'unit' means:

- a. A unit of local government as defined in G.S. 159-44(4);
- b. Any combination of units, as defined in G.S. 160A-460(2), entering into a contract or agreement with each other under G.S. 160A-461; or

- c. Any joint agency established under G.S. 160A-462; as any such section may be amended from time to ~~time~~ time; or
- d. Any regional solid waste management authority created pursuant to G.S. 153A-421."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1990.

S.B. 184

CHAPTER 889

AN ACT TO MAKE EVALUATION BY THE STATE BUILDING COMMISSION OF PRIOR STATE WORK A FACTOR AFFECTING THE AWARD OF CONTRACTS FOR STATE CAPITAL PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-135.26(4) reads as rewritten:

- "(4) To develop procedures for evaluating the work performed by designers and contractors on State capital improvement projects and for use of the evaluations as a factor affecting designer selections and determining qualification of contractors to bid on State capital improvement projects."

Sec. 2. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 11th day of July, 1990.

H.B. 351

CHAPTER 890

AN ACT TO PROVIDE THAT LEGISLATORS' ECONOMIC INTEREST STATEMENTS WILL BE AVAILABLE IN A CENTRAL PLACE.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 14 of Chapter 120 of the General Statutes reads as rewritten:

"PART 2. Statement of Economic Interest.

" § 120-89. *Statement of economic interest by legislative candidates; filing required.*

Every person who files as a candidate for nomination or election to a seat in either house of the General Assembly shall file a statement of economic interest as specified in this Article within 10 days of the filing deadline for the office he seeks.

" § 120-90. *Place and manner of filing.*

The statement of economic interest shall cover the preceding calendar year and shall be filed at the same place, and in the same manner, as the notice of candidacy which a candidate seeking party nomination for the office of State Senator or member of the State House of Representatives is required to file under the provisions of G.S. 163-106.

" § 120-91: Repealed by 1987 (Reg. Sess., 1988), c. 1028, s. 3.

" § 120-92. *Filing by candidates not nominated in primary elections.*

A person who is nominated pursuant to the provisions of G.S. 163-114 after the primary and before the general election, and a person who qualifies pursuant to the provisions of G.S. 163-122 as an independent candidate in a general election shall file with the county board of elections of each county in the senatorial or representative district a statement of economic interest. A person nominated pursuant to G.S. 163-114 shall file the statement within three days following his nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an independent candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed pursuant to that section.

" § 120-93. *County boards of elections to notify candidates of economic-interest-statement requirements.*

Each county board of elections shall provide for notification of the economic-interest-statement requirements of G.S. 120-89, 120-96, and 120-98 to be given to any candidate filing for nomination or election to the General Assembly at the time of his or her filing in the particular county.

" § 120-93.1. *Certification of statements of economic interest.*

The chairman of the county board of elections with which a statement of economic interest is filed shall forward a certified copy of the statement to the Legislative Services Office once the candidate is certified as elected to the General Assembly. The chairman shall also forward a certified copy of each candidate's statement of economic interest, within 10 days after its filing, to the board of elections in each other county in the district the candidate seeks to represent.

" § 120-94. *Statements of economic interest are public records.*

The statements of economic interest are public records and shall be made available for inspection and copying by any person during normal business hours at the office of the various county boards of election where the statements or copies thereof are filed and at the Legislative Library after certified copies are forwarded to the Legislative Services Office. If a county board of elections of a county does not keep an office open during normal business hours each day, that board shall deliver a copy of all statements of economic interest filed with it to the clerk of superior court of the county, and the

statements shall be available for inspection and copying by any person during normal business hours at that clerk's office.

" § 120-95: Repealed by 1987 (Reg. Sess., 1988), c. 1028, s. 3.

" § 120-96. *Contents of statement.*

Any statement of economic interest filed under this Article shall be on a form prescribed by the Committee, and the person filing the statement shall supply the following information:

- (1) The identity, by name, of any business with which he, or any member of his immediate household, is associated;
- (2) The character and location of all real estate of a fair market value in excess of five thousand dollars (\$5,000), other than his personal residence (curtilage), in the State in which he, or a member of his immediate household, has any beneficial interest, including an option to buy and a lease for 10 years or over;
- (3) The type of each creditor to whom he, or a member of his immediate household, owes money, except indebtedness secured by lien upon his personal residence only, in excess of five thousand dollars (\$5,000);
- (4) The name of each 'vested trust' in which he or a member of his immediate household has a financial interest in excess of five thousand dollars (\$5,000) and the nature of such interest;
- (5) The name and nature of his and his immediate household member's respective business or profession or employer and the types of customers and types of clientele served;
- (6) A list of businesses with which he is associated that do business with the State, and a brief description of the nature of such business; and
- (7) In the case of professional persons and associations, a list of classifications of business clients which classes were charged or paid two thousand five hundred dollars (\$2,500) or more during the previous calendar year for professional services rendered by him, his firm or partnership. This list need not include the name of the client but shall list the type of the business of each such client or class of client, and brief description of the nature of the services rendered.

" § 120-97: Repealed by 1987 (Reg. Sess., 1988), c. 1028, s. 3.

" § 120-98. *Penalty for failure to file.*

(a) If a candidate does not file the statement of economic interest within the time required by this Article, the county board of elections shall immediately notify the candidate by registered mail, restricted delivery to addressee only, that, if the statement is not received within 15 days, the candidate shall not be certified as the nominee of his

party. If the statement is not received within 15 days of notification, the board of elections authorized to certify a candidate as nominee to the office shall not certify the candidate as nominee under any circumstances, regardless of the number of candidates for the nomination and regardless of the number of votes the candidate receives in the primary. A vacancy thus created on a party's ticket shall be considered a vacancy for the purposes of G.S. 163-114, and shall be filled according to the procedures set out in G.S. 163-114.

(b) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1028, s. 5."

Sec. 2. This act shall become effective with respect to elections occurring on or after January 1, 1990.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

H.B. 1147

CHAPTER 891

AN ACT TO CLARIFY THAT A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP MAY BE CREATED IF THE RIGHT OF SURVIVORSHIP IS EXPRESSLY PROVIDED FOR IN THE INSTRUMENT CREATING THE JOINT TENANCY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 41-2 reads as rewritten:

"§ 41-2. Survivorship in joint tenancy ~~abolished~~ defined; proviso as to partnership.

~~In~~ Except as otherwise provided herein, in all estates, real or personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant, but shall descend or be vested in the heirs, executors, or administrators, respectively, of the tenant so dying, in the same manner as estates held by tenancy in common: Provided, that estates held in joint tenancy for the purpose of carrying on and promoting trade and commerce, or any useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, are vested in the surviving partner, in order to enable him to settle and adjust the partnership business, or pay off the debts which may have been contracted in pursuit of the joint business; but as soon as the same is effected, the survivor shall account with, and pay, and deliver to the heirs, executors and administrators respectively of such deceased partner all such part, share, and sums of money as he may be entitled to by virtue of the original agreement, if any, or according to his share or part in the joint concern, in the same manner as partnership stock is usually settled between joint merchants and the representatives of their

deceased partners. Nothing in this section prevents the creation of a joint tenancy with right of survivorship in real or personal property if the instrument creating the joint tenancy expressly provides for a right of survivorship, and no other document shall be necessary to establish said right of survivorship. Upon conveyance to a third party by less than all of three or more joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created among the third party and the remaining joint tenants, who remain joint tenants with right of survivorship as between themselves. Upon conveyance to a third party by one of two joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created between the third party and the remaining joint tenant."

Sec. 2. G.S. 41-2.2 is rewritten to read:

"§ 41-2.2. *Joint ownership of corporate stock and investment securities.*

(a) In addition to other forms of ownership, shares of corporate stock or investment securities may be owned by ~~a husband and wife~~ any parties as joint tenants with rights of survivorship, and not as tenants in common, in the manner provided in this section.

(b) (1) A joint tenancy in shares of corporate stock or investment securities as provided by this section shall exist when such shares or securities indicate that they are owned with the right of survivorship, or otherwise clearly indicate an intention that upon the death of either ~~spouse party~~ the interest of the decedent shall pass to the surviving ~~spouse~~ party.

(2) Such a joint tenancy may also exist when a broker or custodian holds the shares or securities for the joint tenants and by book entry or otherwise indicates (i) that the shares or securities are owned with the right of survivorship, or (ii) otherwise clearly indicates that upon the death of either ~~spouse, party~~, the interest of the decedent shall pass to the surviving ~~spouse, party~~. Money in the hands of such broker or custodian derived from the sale of, or held for the purpose of, such shares or securities shall be treated in the same manner as such shares or securities.

(c) Upon the death of a joint tenant his interest shall pass to the surviving joint tenant. The interest of the deceased joint tenant, even though it has passed to the surviving joint tenant, remains liable for the debts of the decedent in the same manner as the personal property included in his estate, and recovery thereof shall be made from the surviving joint tenant when the decedent's estate is insufficient to satisfy such debts.

(d) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-2, 105-11, and 105-24, relating to the administration of the inheritance tax laws, or any other provisions of the law relating to inheritance taxes."

Sec. 3. Nothing in this act shall be construed to affect the validity of instruments that provide for a right of survivorship executed prior to the effective date of this act.

Sec. 4. This act shall become effective January 1, 1991.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

H.B. 1427

CHAPTER 892

AN ACT TO MODIFY PER DIEM AND OFFICER SALARY
AUTHORIZATION FOR THE BOARD OF DENTAL
EXAMINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-43 reads as rewritten:

"§ 90-43. *Compensation and expenses of Board.*

~~Notwithstanding G.S. 93B-5(a), Each each member of the North Carolina State Board of Dental Examiners shall receive as compensation for his services in the performance of his duties under this Article a sum not exceeding the amount provided in G.S. 93B-5(a) one hundred dollars (\$100.00) for each day actually engaged in the performance of the duties of his office, said per diem to be fixed by said Board, and all legitimate and necessary expenses incurred in attending meetings of the said Board.~~

~~All per diem allowances and all expenses paid as herein provided shall be paid upon voucher drawn by the secretary-treasurer of the Board who shall likewise draw voucher payable to himself for the salary fixed for him by the Board.~~

The Board is authorized and empowered to expend from funds collected hereunder such additional sum or sums as it may determine necessary in the administration and enforcement of this Article, and employ such personnel as it may deem requisite to assist in carrying out the administrative functions required by this Article and by the Board."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

H.B. 2079

CHAPTER 893

AN ACT TO INCREASE THE MAXIMUM VEHICLE TAX THAT CAN BE LEVIED IN THE TOWN OF AHOSKIE FROM FIVE DOLLARS TO TEN DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-97(a) reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns other than the City of Durham may levy not more than ~~five dollars (\$5.00)~~ ten dollars (\$10.00) per year upon any vehicle resident therein, and except that the City of Durham may levy not more than one dollar (\$1.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars (\$15.00) per year upon each vehicle operated in such city or town as a taxicab."

Sec. 2. This act applies to the Town of Ahoskie only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

H.B. 2160

CHAPTER 894

AN ACT TO INCORPORATE THE TOWN OF BADIN, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Badin is enacted to read:

"CHARTER OF THE TOWN OF BADIN.

"Chapter I.

"Incorporation and Corporate Powers.

"Section 1.1. Incorporation and corporate powers. The inhabitants of the Town of Badin are a body corporate and politic under the name of 'Town of Badin'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina except as herein specifically limited. Notwithstanding G.S. 160A-3 or G.S. 160A-4,

the specific limitations contained in this Charter are restrictive and not supplementary to the general law of the State.

"Chapter II.

"Corporate Boundaries.

"Sec. 2.1. Town Boundaries. Until modified in accordance with law, the boundaries of the Town of Badin are as follows:

BEGINNING at a point #1 on contour at elevation 541 feet Yadkin. Inc., datum, which is the maximum normal water surface elevation of the Narrows Reservoir, and South 78-05 East 845 feet from the centerline of Tower No. 7 on the line from the Narrows Powerhouse to Alcoa's plant at Badin;

Thence South 18-55 east 1510 feet, point of centerline of Pine Street, Corner No. 2;

Thence meanders centerline of Hog Pen road in a south-westerly direction a distance of 3430 feet, more or less, to a point at the intersection of Hog Pen and Falls Road, Corner No. 3;

Thence meanders centerline of Falls Road in a northwesterly direction a distance of 1230 feet, more or less, to a point in the centerline of Falls Road, Corner No. 4;

Thence South 29-09 West 305 feet, Corner No. 5;

Thence South 73-30 West 698.5 feet, Corner No. 6;

Thence South 06-23 East 562.8 feet, Corner No. 7;

Thence South 27-55 West 905.4 feet, Corner No. 8;

Thence North 64-52 West 615.0 feet, Corner No. 9;

Thence South 03-49 East 150 feet, Corner No. 10;

Thence North 84-00 West 5 feet, Corner No. 11;

Thence South 03-49 East 80 feet, Corner No. 12;

Thence South 86-11 West 143 feet, Corner No. 13;

Thence South 03-49 East 370 feet, Corner No. 14;

Thence South 03-28 East 446 feet, Corner No. 15;

Thence South 05-15 East 630 feet, Corner No. 16;

Thence due West 2362 feet, more or less, to a point in the centerline of Little Mt. Creek, Corner No. 17;

Thence meanders the centerline of Little Mt. Creek in a northwesterly direction a distance of 4190 feet, more or less, Corner No. 18;

Thence North 35-11 West 319 feet, Corner No. 19;

Thence North 89-21 West 446 feet, Corner No. 20;

Thence North 58-19 West 1121 feet, Corner No. 21;

Thence North 32-24 East 1193 feet, Corner No. 22;

Thence North 03-01 East 1385 feet, Corner No. 23;

Thence North 39-20 East 2295 feet, Corner No. 24;

Thence South 50-40 East 820 feet, Corner No. 25;

Thence North 39-30 East 1270 feet, more or less, to a point on the southwest right of way of Highway No. 740, Corner No. 26;

Thence meanders the southwest right of way of Highway No. 740 in a southeasterly direction a distance of 1695 feet, more or less, to a point, said being on the right of way of Highway No. 740 and Alcoa's railroad, Corner No. 27;

Thence meanders the eastern right of way of Alcoa's railroad in a northeasterly direction a distance of 3995 feet, more or less, Corner No. 28;

Thence North 70-00 East 65 feet, more or less, to a point on the Narrows Reservoir at elevation 541 feet, Yadkin, Inc. datum, which is the maximum normal water surface elevation of said reservoir, Corner No. 29;

Thence meanders the 541 contour southwesterly, northeasterly and southeasterly direction a distance of 10,680 feet, more or less, to a point on said contour, point of beginning.

"Chapter III.

"Governing Body.

"Sec. 3.1. Structure of governing body; number of members. The governing body of the Town of Badin is the Town Council, which has five members.

"Sec. 3.2. Manner of electing board. The qualified voters of the entire Town elect the members of the Council. Two Resident Districts shall be established to be known as East Badin and West Badin. The East Badin District shall be defined as all of that area within the boundaries of the town lying to the east of N.C. Highway 740. The West Badin district shall be defined as all of that area within the boundaries of the Town lying to the west of N.C. Highway 740. One Council member shall be elected from each Resident District, with the remaining three members being elected at-large. Candidates for the district seats shall reside in and represent the districts, but all candidates shall be elected by all the qualified voters of the town.

"Sec. 3.3. Term of office of Council members. The initial members of the Council shall be elected in 1990 at the same time as the general election for county officers, and the procedure shall be as generally provided for election of municipal officers in an odd-numbered year, except that the filing period shall open as soon as the results of the incorporation referendum are certified, and shall end at 12:00 noon on the third Friday after that date. The initial district members are elected for three-year terms, their successors shall be elected in 1993 and quadrennially thereafter for four-year terms. In 1990, the at-large candidate receiving the highest number of votes is elected to a three-year term, and the two at-large candidates receiving the next highest numbers of votes are elected to one-year terms. In

1991 and quadrennially thereafter, two at-large members are elected for four-year terms. In 1993 and quadrennially thereafter, one at-large member is elected for a four-year term. Initial town officers shall take office on the Monday following the canvassing of the returns of their election, at a time and place designated by any three of them.

"Sec. 3.4. Selection of Mayor: term of office. The members of the Town Council shall, from among their members, elect the Mayor at their organizational meeting to serve a two-year term, except that the Mayor elected in 1990 shall serve a one-year term.

"Chapter IV.

"Elections.

"Sec. 4.1. Conduct of Town elections. The Town Council shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

"Chapter V.

"Administration.

"Sec. 5.1. Council-Town Administrator plan. The Town of Badin operates under the Council-Town Administrator plan as provided by Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 5.2. From and after July 1, 1990, the citizens and property in the Town of Badin shall be subject to municipal taxes levied for the year beginning July 1, 1990, and for that purpose the Town shall obtain from Stanly County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1990, and the businesses in the town shall be liable for privilege license tax from the effective date of the privilege tax ordinance. The Town may adopt a budget ordinance for fiscal year 1990-91 without following the timetable of the Local Government Budget and Fiscal Control Act. Ad valorem taxes for fiscal year 1990-91 shall become due and payable at par 90 days after the adoption of the ordinance levying them, and thereafter as if they had been due on September 1, 1990, in accordance with the schedule in G.S. 105-360.

"Sec. 5.3. In adopting its initial property tax rate, the Town council shall not exceed a rate of \$.21 per \$100 valuation. Thereafter the rate shall not be increased except biannually and only in the amount which does not exceed (1) the cumulative annual increase in the Implicit GNP Price Deflator over the preceding two years or (2) ten per cent of the rate for the next preceding year, whichever is less.

"Chapter VI.

"Limitation of Powers.

"Sec. 6.1. In recognition of existing regulatory authority of other governmental entities and notwithstanding common law or any general law to the contrary now or hereinafter enacted, the Town shall not

adopt any regulatory ordinance or resolution relating to or affecting industrial facilities and operations.

"Sec. 6.2. Enactment of any ordinance adopting a Building Code, exercising the power of eminent domain, annexing property into the Town, or zoning or rezoning property shall require a 2/3 vote of the Town Council.

"Chapter VII.

"Transfer of Properties Owned and Town Services

Provided by Aluminum Company of America, Inc.

"Sec. 7.1. The Town of Badin shall accept all properties conveyed to it by Aluminum Company of America, Inc. in conjunction with incorporation of the Town, including but not limited to that portion of some street rights of way not previously dedicated to state highway use, sidewalks, back alleys, the storm water drain system and townsite areas set aside as parks. The Town shall maintain such properties as required by the public weal. The Town shall, upon transfer of said properties to it, assume all liability arising from the ongoing operation and maintenance of said properties as well as that attributable to their original design and construction. The Town shall upon incorporation assume the town services heretofore performed and provided by Aluminum Company of America, Inc. including street lighting, maintenance of some street rights of way not previously dedicated to state highway use, maintenance of town-site areas set aside as parks, maintenance of sidewalks, back alleys and storm water drainage systems."

Sec. 2. (a) The Stanly County Board of Elections shall conduct an election on a date set by it, to be not less than 60 nor more than 120 days after the date of ratification of this act, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of Badin, the question of whether or not such area shall be incorporated as Badin. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[] FOR Incorporation of Badin

[] AGAINST Incorporation of Badin".

Sec. 3. In such election, if a majority of the votes cast are cast "FOR Incorporation of Badin" then Section 1 of this act shall become effective on the date that the Stanly County Board of Elections determines the result of the election. Otherwise, Section 1 shall not become effective.

Sec. 3.1. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of the act which can be given effect without the invalid provision.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

H.B. 2170

CHAPTER 895**AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF CHADBOURN.**

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Chadbourne is revised and consolidated to read:

"THE CHARTER OF THE TOWN OF CHADBOURN

"ARTICLE I. INCORPORATION, CORPORATE POWERS AND BOUNDARIES

"Section 1.1. Incorporation. The Town of Chadbourne, North Carolina, in Columbus County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of Chadbourne,' hereinafter at times referred to as the 'Town.'

"Sec. 1.2. Powers. The Town shall have and may exercise all of the powers, duties, rights, privileges and immunities conferred upon the Town of Chadbourne specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. Corporate Limits. The corporate limits shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current boundaries, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Immediately upon alteration of the corporate limits made pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Columbus County Register of Deeds and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY

"Sec. 2.1. Mayor and Town Council. The Mayor and the Town Council, hereinafter referred to as the 'Council,' shall be the governing body of the Town.

"Sec. 2.2. Town Council; Composition; Terms of Office. The Council shall be composed of five members elected by all the qualified voters of the Town for staggered terms of four years or until their successors are elected and qualified.

"Sec. 2.3. Mayor; Term of Office; Duties. The Mayor shall be elected by all the qualified voters of the Town for a term of two years or until his or her successor is elected and qualified; shall be the official head of the Town government and preside at meetings of the Council; shall have the right to vote only when there is an equal division on any question or matter before the Council; and shall exercise the powers and duties conferred by law or as directed by the Council.

"Sec. 2.4. Mayor Pro Tempore. The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the other members of the Council.

"Sec. 2.5. Meetings. In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. Voting Requirements; Quorum. Official actions of the Council and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. A quorum shall exist when a majority of the actual membership of the Council, excluding vacant seats, is present.

"Sec. 2.7. Compensation; Qualifications for Office; Vacancies. The compensation and qualifications of the Mayor and Council members shall be in accordance with general law. Vacancies that occur in any elective office of the Town shall be filled by appointment as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS

"Sec. 3.1. Regular Municipal Elections. Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections are conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Sec. 3.2. Election of Council Members. Two or three council members shall be elected in each regular municipal election, as the respective terms expire.

"Sec. 3.3. Election of Mayor. A Mayor shall be elected in each regular municipal election.

"Sec. 3.4. Special Elections and Referendums. Special elections and referendums may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION

"Sec. 4.1. Form of Government. The Town shall operate under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. Town Manager. The Council shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

"Sec. 4.3. Town Clerk. The Town Manager shall appoint a Town Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents; to give notice of meetings; and to perform such other duties required by law or as the Council may direct.

"Sec. 4.4. Tax Collector. The Town Manager shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the Town, subject to general law, this Charter and Town ordinances.

"Sec. 4.5. Town Attorney. The Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials and perform other duties required by law or as the Council may direct.

"Sec. 4.6. Fire Chief. The Council shall appoint a Fire Chief qualified to perform the duties of chief of the Chadbourn Volunteer Fire Department and Rescue Squad.

"Sec. 4.7. Other Administrative Officers and Employees. The Council may authorize other positions to be filled by appointment by the Town Manager, and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. ADDITIONAL PROVISIONS

"Sec. 5.1. Alcoholic Beverage Control Stores. Alcoholic Beverage Control Stores shall operate within the Town of Chadbourn as provided in Chapter 540, Session Laws of 1967, and Chapter 18B of the General Statutes."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Chadbourn and to consolidate certain acts concerning the property, affairs and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the property, affairs or government of public schools, or acts

validating official actions, proceedings, contracts or obligations of any kind.

Sec. 4. All acts in conflict with this act are repealed. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 93,	Private Laws of 1883
Chapter 382,	Private Laws of 1909
Chapter 398,	Private Laws of 1911
Chapter 585,	Public-Local Laws of 1911
Chapter 1141	Session Laws of 1949, as to the Town of Chadbourn only
Chapter 212,	Session Laws of 1951
Chapter 1121,	Session Laws of 1955
Chapter 967,	Session Laws of 1957
Chapter 1014,	Session Laws of 1957
Chapter 896,	Session Laws of 1959
Chapter 1,	Session Laws of 1961, except for Section 2
Chapter 1,	Session Laws of 1965
Chapter 738,	Session Laws of 1967
Chapter 935,	Session Laws of 1969
Chapter 211,	Session Laws of 1977
Chapter 38,	Session Laws of 1989

Sec. 5. Chapter 540, Session Laws of 1967, as it applies to Chadbourn only, is deemed amended to change each reference to "G.S. Chapter 18," or the equivalent, to "G.S. Chapter 18B." References to particular sections or Articles of former G.S. Chapter 18 are deemed amended to refer to the provisions of current G.S. Chapter 18B which most closely correspond, and as they may be later amended or recodified.

Sec. 6. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms. Thereafter those offices shall be filled as provided in Articles II and III of the Charter contained in Section 1 of this act.

Sec. 7. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 8. All existing ordinances, resolutions and other provisions of the Town of Chadbourn not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 9. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 10. If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications

of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 11. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 11.1. The conveyance from the Town of Chadbourn to Valory Freeman, dated May, 1990, and recorded June 5, 1990 in Book 411, Page 416, Columbus County Registry, is validated notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes.

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

H.B. 2171

CHAPTER 896

AN ACT TO AMEND THE CHARTER OF THE CITY OF GREENSBORO WITH RESPECT TO RECALL PETITIONS AND WITH RESPECT TO VOTING REQUIREMENTS ON APPROPRIATING FUNDS FROM THE GENERAL FUND BALANCE OF THE CITY OF GREENSBORO.

The General Assembly of North Carolina enacts:

Section 1. Sec. 2.71(c) (2) of the Charter of the City of Greensboro, as set forth in Section 1, Chapter 1137 of the Session Laws of 1959, is amended by rewriting the sub-subsection to read as follows:

"Voters seeking the recall of any member of the council shall proceed by way of a recall petition addressed to the council identifying the council member concerned, requesting his/her removal from office and stating the grounds alleged for his/her removal. With respect to any council member elected at large, any recall petition must be filed with the city clerk and must be signed by qualified voters of the city equal in number to at least 25% of the qualified voters of the city who voted at the last preceding election of city council members. With respect to any city council member elected from a district, any recall petition must be filed with the city clerk and must be signed by qualified voters of that council member's district equal in number to at least 25% of the qualified voters of such district who voted at the last preceding election for its city council member."

Sec. 2. Sec. 2.73(g) of the Charter of the City of Greensboro, as set forth in Section 1, Chapter 1137 of the Session Laws of 1959, is amended by rewriting the entire sixth sentence to read as follows:

"Upon completion of its check, the board of elections shall forthwith certify to the city clerk: (1) The total number of registered voters of the city or the municipal electoral district, whichever is applicable, at the time of the most recent election of members of the city council; and (2) the number of voters registered in the city or in the municipal electoral district, if applicable, whose signatures, marked by the clerk, appear on the petition papers that the board found it necessary to examine."

Sec. 3. Sec. 2.75(b) of the Charter of the City of Greensboro, as set forth in Section 1, Chapter 1137 of the Session Laws of 1959, is amended by rewriting the fifth sentence thereof to read as follows:

"Upon completion of this check, the board of elections shall forthwith certify to the city clerk the number of voters registered in the city or in the municipal electoral district, if applicable, whose signatures, marked by the clerk, appear on the supplementary petition papers that the board found it necessary to examine."

Sec. 4. Sec. 2.76(c) of the Charter of the City of Greensboro, as set forth in Section 1, Chapter 1137 of the Session Laws of 1959, is amended by adding a new sentence at the end thereof to read as follows:

"Any recall election for a council member from an electoral district shall be held within that district only."

Sec. 4.1. Section 3.23(b) of the Charter of the City of Greensboro, being Chapter 1137 of the Session Laws of 1959, as rewritten by Section 13 of Chapter 213, Session Laws of 1973 reads as rewritten:

"(b) The Mayor shall be considered and given the same status as a member of the Council for the purpose of determining a quorum of the City Council and for the purpose of voting. A majority of the members of the Council shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members by ordering them to be taken into custody. The affirmative vote of a majority of the members of the Council shall be necessary to adopt any ordinance. All other matters voted upon shall be by majority vote of the Council members present but no ordinance shall be adopted on the same day it is introduced unless five affirmative votes are received in favor of it. Nevertheless, with respect to any ordinance amending the budget to appropriate funds from the Unappropriated Fund Balance of the General Fund, the affirmative vote of seven members of the council shall be necessary to adopt any such amendment, except in case of an

emergency. For the purpose of this section, an emergency is an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property and to secure the public safety. No member shall be excused from voting except on matters involving the consideration of his own official conduct or involving his financial interest."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

H.B. 2184

CHAPTER 897

AN ACT TO PROVIDE FOR THE REGISTRATION OF LAND IN WARREN COUNTY AND TO REQUIRE ANY PERSON HUNTING OR POSSESSING A FIREARM OR BOW AND ARROW THAT IS READILY AVAILABLE FOR USE TO SECURE AN ENTRY PERMIT BEFORE ENTERING OR REMAINING ON REGISTERED LAND OR REMAINING ON ABUTTING PORTIONS OF HIGHWAY.

The General Assembly of North Carolina enacts:

Section 1. Definitions. The definitions in Article 12 of Chapter 113 of the General Statutes of North Carolina apply in the construction of this act. In addition, the following definitions apply:

- (1) Abutting Portion of Highway. The portion of a highway immediately abutting registered land. This immediately abutting portion extends from the center of the main-traveled portion to the right-of-way boundary shared with the registered land.
- (2) Entry Permit. The permit described in Section 3.
- (3) Highway. The entire distance between right-of-way property lines of every public roadway.
- (4) Possessor of Land. A person who owns land, is a lessee in general possession of land, or is the lessee of hunting rights on the land.
- (5) Registered Land. Land that has been accepted for registration by the sheriff and published as such, and which has not been deleted from registration.
- (6) Registrant. A current applicant of record for a tract of registered land.
- (7) Sheriff. The Sheriff of Warren County or any of his deputies or employees authorized to perform the duties under this act.

Sec. 2. Registration procedure.

(a) A person who possesses land and wishes to register it under this act must apply to the sheriff in accordance with this section.

(b) A new registration application or a renewal application containing an amendment of the boundaries of the tract of registered land must be filed with the sheriff between July 1 and August 1 and must contain:

- (1) A statement under oath by the applicant that he is the possessor of the tract of land to be registered. If the applicant is not an owner, he must file a copy of his lease or other document granting him his right of general possession of or the control of hunting rights on the land.
 - (2) Three copies of a description of the tract that will allow law enforcement officers to determine in the field, and prove in court, whether an individual is within the boundaries of the tract. This description may take the form of a map, plat, aerial photograph showing boundaries, diagram keyed to known landmarks, or any other document or description that graphically demarks the boundaries with sufficient accuracy for use by officers in court and in the field.
 - (3) An agreement by the applicant to post the tract in accordance with the requirements of this section by August 15, and to make a continuing effort to maintain posted notices for the tract.
 - (4) An agreement by the applicant to issue or cause issuance of an entry permit to all individuals not exempted by Section 5(c) to whom he or his authorized agent gives permission to hunt, or to possess a firearm or bow and arrow that is readily available for use, on the tract or on any highway adjacent to the tract. The applicant must file the name and signature of any agent authorized by him to issue the entry permit.
 - (5) An agreement to notify the sheriff in writing immediately upon rescinding the authority of any agent and to file the name and signature of any new agent with the sheriff.
 - (6) A fee of ten dollars (\$10.00) to cover the administrative costs of processing the registration application.
- (c) An application for annual renewal of registration in which there is no change of boundaries of the tract must be filed with the sheriff between July 1 and August 1 and must contain:
- (1) A statement under oath by the applicant that he remains the possessor of the tract of registered land.
 - (2) A statement under oath that every posted notice required by this section has been reviewed within the 30 days preceding the application and a specification as to any failure of

compliance with the posting requirements. If there is any such failure, the registrant must agree to bring his tract of registered land into full compliance with posting requirements by August 15.

- (3) An agreement to make a continuing effort to maintain posted notices for the tract.
- (4) An agreement to issue or cause issuance of an entry permit to all individuals not exempted by Section 5(c) to whom he or his authorized agent gives permission to hunt, or to possess a firearm or bow and arrow that is readily available for use, on the tract or on any highway adjacent to the tract. The registrant must list the name of each agent currently authorized by him to issue the entry permit, and must file the name and signature of any agent newly so authorized.
- (5) An agreement to notify the sheriff in writing immediately upon rescinding the authority of an agent and to file the name and signature of any new agent with the sheriff.
- (6) A fee of five dollars (\$5.00) to cover the administrative costs of processing the renewal application.

(d) Within 20 days after a registrant loses his status as the possessor of all or any part of a tract of registered land, he must notify the sheriff of this fact. If there is a new possessor who wishes to retain the land's registered status, and there will be no change as to the overall boundaries of registered land, the new possessor may within 20 days after gaining this status apply to the sheriff to have the former registrant's application amended to designate him as the possessor of the transferred tract or portion of the tract. The amended application must contain all the provisions of a renewal application under subsection (c), and the new possessor must pay a fee of five dollars (\$5.00) to cover the administrative costs of processing the renewal application. If there is any lapse as to the registered status of the land or any change as to boundaries of registered land, application must be made between July 1 and August 1 under the provisions of subsection (b).

(e) The sheriff must first examine each application submitted under subsection (b) to determine whether the description of the tract will satisfy the provisions of subdivision (2). If the description is not adequate, the sheriff may in his discretion reject the application or require an amended description that does satisfy those provisions. If the application otherwise satisfies the provisions of subsection (b), the sheriff before September 1 must inspect the tract to be registered to determine whether the land is properly posted in compliance with this section. As to renewal applications, the sheriff must determine whether the provisions of subsection (c) are met. Of the applications

that do meet the requirements, he must make spot checks of the tracts of land covered by these applications before September 1 for compliance with the posting requirements of this section.

(f) By September 1 each year, the sheriff must:

- (1) File with the Register of Deeds of Warren County a listing of all tracts of land accepted by him for registration during the ensuing year. This listing must contain an abbreviated description of the location of each tract of land so accepted.
- (2) File with the Register of Deeds a copy of the full description of the boundaries of each tract accepted for registration that year under subsection (b). As to the remaining applications accepted, the sheriff must indicate in his filing with the Register of Deeds the year in which a full description was filed for that tract that met the requirements of subdivision (2) of subsection (b).
- (3) File with the North Carolina Wildlife Resources Commission all of the material required to be filed with the Register of Deeds under subdivisions (1) and (2). The sheriff must also furnish the North Carolina Wildlife Resources Commission with a copy of the signature of each registrant and agent newly authorized to issue entry permits during the ensuing year, and a listing of agents no longer authorized to issue entry permits. In addition, throughout the year as registrants make changes with respect to their authorized agents or there are amended applications that substitute registrants, the sheriff must as soon as feasible inform the Commission of the changes and file with the Commission a copy of the signatures of new registrants and agents.
- (4) Release for publication by appropriate media with coverage in Warren County the listing described in subdivision (1).
- (5) Compile and maintain throughout the ensuing year in his office, so that the information is freely available to the public, all of the information covered by this subsection.

(g) Each registrant under this act must post his tract of registered land within the time limits agreed to by him in his registration application, and the registrant must from time to time inspect his registered land and repost the land to keep it in conformance with the requirements of this subsection. Posted notices must measure at least 120 square inches; contain the word "POSTED" in letters at least three inches high; state that the land is registered with the Sheriff of Warren County and that hunting and the possession of weapons are prohibited without an entry permit. Notices must be conspicuously posted not more than 200 yards apart close to and along the boundaries of the tract. In any event, at least one notice

must be placed on each side of the registered tract, one at each corner, one facing toward the traveled portion of each abutting highway, and one at each point of entry. A point of entry is where a roadway, trail, path, or other way likely to be used by entering hunters and weapons possessors leads into the tract. Notices posted along the boundaries of a tract must face in the direction that they will most likely be seen by hunters and weapons possessors.

(h) Any law enforcement officer or any employee of the North Carolina Wildlife Resources Commission who determines that a registrant has failed to keep registered property posted in substantial compliance with this section must so notify the registrant or his agent. If within a reasonable time after notice the registrant fails to take steps to post or repost the tract, or if without regard to notice a registrant is inexcusably or repeatedly negligent in failing to keep the tract properly posted, the sheriff upon learning of this must immediately delete registration of the tract, notify the registrant, or the present possessor if the registrant is no longer a possessor, and require that the responsible person remove any remaining posted notices.

(i) When there is no renewal of an application for registration, when the sheriff learns that a registrant is no longer the possessor of a registered tract of land and there has been no timely application by the new possessor to amend the registration, or when a registrant requests that his tract of land be deleted from registration, the sheriff must immediately delete the registration of the tract, notify the current possessor of his action, and require him to remove all posted notices.

(j) A possessor's failure to cause the removal of all posted signs within a reasonable time after receipt of notice that the tract has been deleted from registration is a misdemeanor punishable in the discretion of the court.

Sec. 3. Entry permits and posted notices furnished by sheriff.

(a) Upon initial or renewal registration of a tract of land, the sheriff must furnish the registrant with a reasonable number of entry permit forms to be carried by individuals given permission to hunt, or possess a firearm or bow and arrow that is readily available for use, on the registered land or on any highway abutting the registered land. The sheriff must establish a procedure for resupplying registrants and their agents with entry permit forms for their registered land as needed.

(b) To be valid, the entry permit must be issued and dated within the previous 12 months and signed by the registrant, or by an authorized agent of the registrant whose signature is on file with the sheriff.

(c) The sheriff must procure a stock of posted notices that meet the requirements of subsection (g) of Section 2 of this act and, upon

initial or renewal registration, furnish the registrant with a sufficient number of posted notices that he may comply with the posting requirements of this act. The sheriff must establish a procedure for supplying registrants with additional posted notices as needed for reposting in compliance with this act.

Sec. 4. Affirmative duty of hunters and weapons possessors to determine if land is registered. Every individual who enters the land of another to hunt or who is in possession of a firearm or a bow and arrow that is readily available for use and every individual who hunts or discharges a firearm while upon a highway or the land of another is first under a duty to:

- (1) Make appropriate inquiries to determine whether the land on which hunting or the possession of weapons will occur is registered land;
- (2) Make appropriate inquiries to determine whether the land abutting the portion of highway on which hunting or the possession of weapons will occur is registered land; and
- (3) Look for posted notices that may warn him of the registered status of any land on which hunting or the possession of weapons will occur and for posted notices on the land abutting the portion of the highway on which hunting or the possession of weapons will occur.

Sec. 5. Hunting or possessing weapons without permission on registered land or on abutting portions of highway; exceptions.

(a) No one may hunt or possess a firearm or bow and arrow that is readily available for use, or enter to hunt or while in possession of a firearm or bow and arrow that is readily available for use, on registered land without having in possession a valid entry permit for that land issued to him.

(b) No one may hunt or possess a firearm or bow and arrow that is readily available for use on any portion of a highway that abuts registered land without having in possession a valid entry permit for the abutting land issued to him.

(c) This section does not apply to the registrant and members of his immediate family who are hunting or possessing weapons on the registrant's land or on abutting portions of highway.

(d) This section does not apply to travelers on the highway in lawful possession of weapons during the course of travel and who have not stopped or loitered on the highway for the purpose of hunting or using weapons.

Sec. 6. Removal, destruction, or mutilation of posted notices. Unauthorized removal, destruction, or mutilation of posted notices on registered land is a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00), imprisonment not to exceed 90 days, or both.

Sec. 7. Posting without authority. No person who is not a registrant of the land in question may erect the notices described in subsection (g) of Section 2 of this act.

Sec. 8. Publication of registration provisions by Wildlife Resources Commission. The Wildlife Resources Commission must in its general publications concerning the laws and regulations pertaining to hunting give appropriate publicity to the provisions of the act and need for hunters and weapons possessors to make the inquiries set out in Section 4.

Sec. 9. General provisions pertaining to enforcement of act.

(a) If land is registered, the original or a true copy of the application and all supporting items are admissible in evidence. The registrant's affidavit respecting the nature of his possessory interest in the tract of land registered constitutes *prima facie* evidence of the facts so asserted. The description filed with the application constitutes *prima facie* evidence of the boundaries of the registered land.

(b) If an individual hunts or possesses a weapon on any registered land or on any abutting portion of highway, or if an individual enters registered land to hunt or while in possession of a weapon, any possessor of that land, any agent of the possessor, any wildlife protector, or any law enforcement officer may request that the individual produce a valid entry permit. It is unlawful for any such individual to refuse to exhibit an entry permit.

(c) It is the duty of the sheriff, wildlife protectors, and all law enforcement officers with general enforcement jurisdiction to investigate reported violations of this act and to initiate prosecutions when they determine that violations have occurred.

(d) Any officer who determines that a violation of this act has occurred should initiate a prosecution by issuing a citation or seeking the issuance of a criminal summons unless he has reason to believe that the violator will not appear in court on the appointed date.

(e) Unless a different punishment is elsewhere provided under this act, a violation of any provision of this act is a misdemeanor punishable by a fine not to exceed fifty dollars (\$50.00) or imprisonment not to exceed 30 days.

Sec. 10. This act applies only to Warren County.

Sec. 11. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

RECEIVE COMPENSATION FOR ECONOMIC LOSS FROM THE VICTIMS COMPENSATION FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15B-11(a) reads as rewritten:

"(a) An award of compensation will be denied if:

- (1) The claimant fails to file his application for an award within one year after the date of the criminally injurious conduct that caused the injury or death for which he seeks the award;
- (2) The economic loss is incurred after one year from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the ~~award;~~ award, except in the case where the victim for whom compensation is sought was 10 years old or younger at the time the injury occurred. In that case an award of compensation will be denied if the economic loss is incurred after two years from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award;
- (3) The criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and there was no good cause for the delay;
- (4) The award would benefit the offender, his accomplice, a spouse of or a person living in the same household with the offender or his accomplice, or a parent, child, brother, or sister of the offender or his accomplice, unless a determination is made that the interests of justice require that an award be approved in a particular case; or
- (5) The criminally injurious conduct occurred while the victim was confined in any State, county, or city prison, correctional, youth services, or juvenile facility, or local confinement facility, or half-way house, group home, or similar facility."

Sec. 2. This act is effective upon ratification and applies to criminally injurious conduct occurring on or after two years before the date of ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

S.B. 132

CHAPTER 899

AN ACT TO REMOVE THE STATUTORY REQUIREMENT THAT THE PRESIDENT PRO TEMPORE SERVE ON THE SENATE COMMITTEE ON PENSIONS AND RETIREMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-111.1 reads as rewritten:

" § 120-111.1. *Creation.*

A standing committee is hereby created in the House of Representatives to be known as the Committee on Pensions and Retirement, to consist of a minimum of four members to be appointed by the Speaker of the House of Representatives. A standing committee is hereby created in the Senate to be known as the Committee on Pensions and Retirement, to consist of the following members at the minimum, ~~the President pro tempore of the Senate;~~ the Chairmen of the Senate Committees on Appropriations, Finance and Ways and Means."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

S.B. 382

CHAPTER 900

AN ACT TO EXPAND THE LIST OF OFFICES AND DEPARTMENTS RECEIVING SUMMER INTERNS ALLOCATED BY THE NORTH CAROLINA INTERNSHIP COUNCIL OF THE DEPARTMENT OF ADMINISTRATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-417 reads as rewritten:

" § 143B-417. *North Carolina Internship Council -- creation; powers and duties.*

There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

- (1) To determine the number of student interns to be allocated to each of the following offices or departments:
 - a. Office of the Governor
 - b. Department of Administration
 - c. Department of Correction
 - d. Department of Cultural Resources
 - e. Department of Revenue
 - f. Department of Transportation
 - g. Department of Natural Resources and Community Development
 - h. Department of Commerce
 - i. Department of Crime Control and Public Safety
 - j. Department of Human Resources
 - k. Office of the Lieutenant Governor

- l. Office of the Secretary of State
 - m. Office of the State Auditor
 - n. Office of the State Treasurer
 - o. Department of Public Education
 - p. Repealed by Session Laws 1985, c. 757, s. 162, effective July 1, 1985
 - q. Department of Agriculture
 - r. Department of Labor
 - s. Department of Insurance
 - t. Office of the Speaker of the House of Representatives
 - u. Justices of the Supreme Court and Judges of the Court of Appeals
 - v. Department of Community Colleges
 - w. Office of State Personnel
 - x. Office of the Senate President Pro Tempore;
- (2) To screen applications for student internships and select from these applications the recipients of student internships; and
- (3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and departments enumerated in (1)."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

S.B. 1487

CHAPTER 901

AN ACT TO PROVIDE A THIRD OPTION FOR DISTRIBUTION OF LOCAL SALES TAX REVENUE WITHIN PENDER COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-472 reads as rewritten:

" § 105-472. *Disposition and distribution of taxes collected.*

With respect to the counties in which he shall collect and administer the tax, the Secretary of Revenue shall, on a quarterly basis, distribute to each taxing county and to the municipalities therein the net proceeds of the tax collected in that county under this Article which amount shall be determined by deducting taxes refunded, the cost to the State of collecting and administering the tax in the taxing county and such other deductions as may be properly charged to the taxing county, from the gross amount of the tax remitted to the Secretary of Revenue from the taxing county. The Secretary shall determine the cost of collection and administration, and that amount shall be retained

by the State before distribution of the net proceeds of the tax. For the purposes of this Article, 'municipalities' shall mean cities as defined by G.S. 153A-1(1).

The board of county commissioners shall, in the resolution levying the tax, determine that the net proceeds of the tax shall be distributed in one of the following methods and thereafter ~~said~~ the proceeds shall be distributed in ~~accordance therewith; that method:~~

- (1) The amount distributable to a taxing county and to the municipalities therein from the net proceeds of the tax collected therein shall be determined upon the following basis: The net proceeds of the tax collected in a taxing county shall be distributed to that taxing county and to the municipalities therein upon a per capita basis according to the total population of the taxing county, plus the total population of the municipalities therein; provided, however, that 'total population' of a municipality lying within more than one county shall be only that part of its population which lives within the taxing county. For this purpose, the Secretary of Revenue shall determine a per capita figure by dividing the net proceeds of the tax collected under this Article for the preceding quarter within a taxing county by the total population of that taxing county plus the total population of all municipalities therein according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. The per capita figure thus derived shall be multiplied by the population of the taxing county and each respective municipality therein according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer, and each respective product shall be the amount to be distributed to each taxing county and to each municipality therein. The State Budget Officer shall annually cause to be prepared and shall certify to the Secretary of Revenue such reasonably accurate population estimates of all counties and municipalities in the State as may be practicably ~~developed; or developed.~~
- (2) The net proceeds of the tax collected in a taxing county shall be divided between the county and the municipalities therein in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the taxing county during the fiscal year next preceding such distribution. For purposes of this section, the amount of the ad valorem taxes levied by such county or municipality shall include any ad valorem taxes levied by such county or municipality in

behalf of a taxing district or districts and collected by the county or municipality. In computing the amount of tax proceeds to be distributed to any county or municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distributable share of the sales and use tax levied under this Article shall in turn immediately share the proceeds with any district or districts in behalf of which the county or municipality levied ad valorem taxes in the proportion that the district levy bears to the total levy of the county or municipality. Any county or municipality which fails to provide the Department of Revenue with information concerning ad valorem taxes levied by that county or municipality adequate to permit a timely determination of the appropriate share of that county or municipality of tax proceeds collected under this Article may be excluded by the Secretary from each quarterly distribution with respect to which such information was not provided in a timely manner, and such tax proceeds shall then be distributed only to the governmental unit or units whose information was provided in a timely manner. For the purpose of computing the distribution of the tax under this subsection to any county and the municipalities located therein for any quarter with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and the municipalities therein, the Department shall use the last property valuation of such public service company which has been so certified in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein.

- (3) Of the net proceeds of the tax collected in a taxing county, one-half shall be distributed as provided in subdivision (1) and one-half shall be distributed as provided in subdivision (2).

Where local use taxes, levied pursuant to this Article, or to any other local sales tax act, which cannot be identified as being attributable to any particular taxing county are collected and remitted to the Secretary, he shall apportion said taxes to the taxing counties in the same proportion that the local sales and use taxes collected each month in a taxing county bears to the total local sales and use taxes

collected in all taxing counties each month during the quarter for which a distribution is to be made, and the total net proceeds shall then be distributed as above provided.

The board of county commissioners in each taxing county shall, by resolution adopted during the month of April of each year, determine which of the ~~two~~ foregoing methods of distribution shall be in effect in the county during the next succeeding fiscal year. In order for such resolution to be effective, a certified copy thereof must be delivered to the Secretary of Revenue at his office in Raleigh within 15 calendar days after its adoption. If the board fails to adopt any resolution or if it fails to adopt a method of distribution not then in effect in the county, or if a certified copy of the resolution is not timely delivered to the Secretary, the method of distribution then in effect in the county shall continue in effect for the following fiscal year. The method of distribution in effect on the first of July of each fiscal year shall apply to every distribution made during that fiscal year."

Sec. 2. This act applies to Pender County only.

Sec. 3. This act shall become effective July 1, 1990, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

S.B. 1512

CHAPTER 902

AN ACT TO ALLOW THE TOWN OF ST. PAULS TO MAKE
THE TOWN ADMINISTRATOR THE HEAD OF ALL TOWN
DEPARTMENTS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of St. Pauls, being Chapter 411, Session Laws of 1957, is amended by adding a new section to read:

"Sec. 30.1. The board of commissioners by ordinance may provide that the Town Administrator is the head of all town departments."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

S.B. 1520

CHAPTER 903

AN ACT REGARDING WHEN THE NASH COUNTY BOARD OF
EDUCATION CAN PAY ITS EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Chapter 115C of the General Statutes, the Nash County Board of Education may pay employees who are employed on a 10-month basis on or before the 15th of each month during which they are employed and employees who are employed on a 12-month basis on or before the 25th of each month during which they are employed.

Sec. 2. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

S.B. 1521

CHAPTER 904**AN ACT TO EXEMPT THE TOWN OF BAILEY FROM CERTAIN ZONING NOTICE REQUIREMENTS.**

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-384 or any other provision of law, when a city is zoning property, in lieu of mailing a notice of the proposed zoning classification actions to any property owner or other person a city may publish once a week for four successive calendar weeks in a newspaper having general circulation in the area a map showing the boundaries of the area which the city proposes to zone. Such map shall be not less than one-half of a newspaper page in size and shall be published on the dates that the notice of hearing with regard to such proposed zoning actions is published pursuant to G.S. 160A-364. This notice shall only be effective for property owners that reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of said area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to G.S. 160A-384.

Sec. 2. This act applies only to the Town of Bailey.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

S.B. 1522

CHAPTER 905**AN ACT TO AUTHORIZE ALLEGHANY, CASWELL, RICHMOND, AND WATAUGA COUNTIES TO COLLECT CERTAIN FEES IN THE SAME MANNER AS AD VALOREM TAXES.**

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 591, Session Laws of 1989, reads as rewritten:

"Sec. 2. This act applies to Alleghany, Ashe, Caswell, Richmond, Robeson, Watauga, and Wayne Counties only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

S.B. 1536

CHAPTER 906

AN ACT TO ESTABLISH FEES FOR PROCESSING EROSION CONTROL PLAN APPROVALS UNDER THE SEDIMENTATION POLLUTION CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

" § 113A-54.2. Approval Fees.

(a) The Commission may establish a fee schedule for the review and approval of erosion control plans under this Article. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities. The total amount of the fees collected under this section in any fiscal year may not exceed one-third of the total administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities in the prior fiscal year, but in no event may any one application fee exceed fifty dollars (\$50.00) per acre of disturbed land shown on the plans or actually disturbed during the life of the project.

(b) Fees collected under this section shall be credited to the General Fund and may be used to:

- (1) Defray the expenses of any project or program, including educational programs, supporting plan approval, and compliance activities under this Article; and
- (2) Establish additional permanent positions, under Chapter 126 of the General Statutes, for plan approval and compliance activities under this Article.

(c) The Department shall make a biennial report to the Joint Legislative Commission on Governmental Operations and the Director of the Fiscal Research Division on the cost of the State's program to approve erosion control plans. The report shall include the fees established and collected under this section and any other information requested by the General Assembly or the Commission.

(d) This section may not limit the existing authority of local programs approved pursuant to this Article to assess fees for the approval of erosion control plans."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

H.B. 1241

CHAPTER 907

AN ACT TO CLARIFY THE ADMISSIONS STATUS OF PERSONS
ELIGIBLE FOR IN-STATE TUITION AT THE UNIVERSITY
OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 14 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-143.4. Admissions status of persons charged in-State tuition.

A person eligible for the in-State tuition rate pursuant to this Article shall be considered an in-State applicant for the purpose of admission; provided that, a person eligible for in-State tuition pursuant to G.S. 116-143.3(c) shall be considered an in-State applicant for the purpose of admission only if at the time of seeking admission he is enrolled in a high school located in North Carolina or enrolled in a general education development (GED) program in an institution located in this State."

Sec. 2. This act is effective upon ratification and applies to admissions for academic years beginning academic year 1989-90.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

H.B. 2074

CHAPTER 908

AN ACT TO INCREASE THE MAXIMUM BOND THAT MAY BE
REQUIRED OF FUEL DISTRIBUTORS AND SUPPLIERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-433 reads as rewritten:

"§ 105-433. Application for license as distributor.

Any distributor engaged in business on April 1, 1931, shall, within 30 days thereafter, and any other distributor shall, prior to the commencement of doing business, file a duly acknowledged application for a license with the Secretary of Revenue on a form prescribed and furnished by him setting forth the name under which such distributor transacts or intends to transact business within this

State, the address of each place of business and a designation of the principal place of business. If such distributor is a firm or association, the application shall set forth the name and address of each person constituting the firm or association, and if a corporation, the names and addresses of the principal officers and such other information as the Secretary of Revenue may require. Each distributor shall at the same time file a bond in such amount, ~~not exceeding forty thousand dollars (\$40,000)~~ in such ~~form~~ form, and with such surety or sureties as may be required by the Secretary of Revenue, conditioned upon the rendition of the reports and the payment of the tax hereinafter provided for. The amount of the bond required by the Secretary may not exceed the greater of (i) two thousand dollars (\$2,000) or (ii) two times the distributor's average monthly tax liability under this Article or, in the case of an initial bond, two times the distributor's estimated average monthly tax liability under this Article, as determined by the Secretary. A distributor who is also required to be bonded under G.S. 105-449.5 as a supplier of special fuels may file a single bond, under either this section or under G.S. 105-449.5, for the combined amount required under these sections ~~but not exceeding eighty thousand dollars (\$80,000)~~ and conditioned upon compliance with the requirements of Article 36 and Article 36A of this Subchapter. A distributor required to file a bond under this section shall, within 30 days after receiving a notice from the Secretary of Revenue, file an additional bond in the amount requested by the Secretary. The amount of the initial bond and any additional bonds filed by the distributor, however, may not exceed the limits set in this section. Upon approval of the application and bond, the Secretary of Revenue shall issue to the distributor a nonassignable license with a duplicate copy for each place of business of said distributor in this State, which shall be displayed in a conspicuous place at each such place of business and shall continue in force until surrendered or canceled. No distributor shall sell, offer for sale, or use any motor fuels within this State until such license has been issued. Any distributor failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100.00), nor more than five thousand dollars (\$5,000), or imprisonment for not more than 24 months, or both."

Sec. 2. G.S. 105-449.5 reads as rewritten:

"§ 105-449.5. Supplier to file bond.

A supplier's license shall not be issued until the applicant has filed with the Secretary a bond in the approximate sum of ~~three~~ two times the average monthly tax due to be paid by ~~such supplier,~~ the supplier, as determined by the Secretary, but the amount of the bond shall in

no case be less than five hundred dollars (\$500.00). ~~(\$500.00) nor more than forty thousand dollars (\$40,000).~~ Such bond shall be in such form and with such surety or sureties as may be required by the Secretary, conditioned upon making proper reports and paying the tax provided for in this Article, and otherwise complying with the provisions of this Article. A supplier who is also required to be bonded under G.S. 105-433 as a distributor of motor fuels may file a single bond, under either this section or under G.S. 105-433 for the combined amount required under these sections, ~~sections but not exceeding eighty thousand dollars (\$80,000),~~ and conditioned upon compliance with the requirements of Article 36 and Article 36A of this Subchapter. A supplier required to file a bond under this section shall, within 30 days after receiving a notice from the Secretary, file an additional bond in the amount requested by the Secretary. The amount of the initial bond and any additional bonds filed by the supplier, however, may not exceed the limits set in this section."

Sec. 3. This act shall become effective January 1, 1991.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

H.B. 2091

CHAPTER 909

AN ACT TO PROVIDE FOR AN AGE SEVENTY SPORTSMAN COMBINATION HUNTING-FISHING LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-270.2(c) reads as rewritten:

"(c) The hunting licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident sportsman combination license -- \$40.00. This license is valid only for use by an individual resident of the State.
- (1a) Lifetime sportsman combination licenses. -- These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue:
 - a. Type I available only to an individual under one year of age -- \$200.00.
 - b. Type Y available only to an individual under 12 years of age -- \$350.00.
 - c. Type A available to a resident individual of any age -- \$500.00.
 - d. Type N available to a nonresident individual of any age -- \$1,000.

- (2) Resident combination hunting-fishing license -- \$20.00. This license is valid only for use by an individual resident of the State.
- (3) Resident State hunting license -- \$15.00. This license is valid only for use by an individual resident of the State.
- (3a) Lifetime resident comprehensive hunting license -- \$250.00. This license is valid only for use by an individual resident of the State.
- (4) Resident county hunting license -- \$10.00. This license is valid for use by an individual resident of the State within the county in which he resides.
- (5) Controlled shooting preserve hunting license -- \$15.00. This license is valid only for use by an individual hunting in special controlled shooting preserves licensed in accordance with this Subchapter.
- (6) Nonresident sportsman combination license -- \$130.00. This license is valid for use by an individual within the State.
- (7) Repealed by Session Laws 1987, c. 156, s. 1.
- (8) Nonresident six-day hunting license -- \$40.00. This license is valid only for use on six consecutive hunting days by an individual within the State. Consecutive hunting days do not include Sundays except on military reservations where Sunday hunting is permitted.
- (8a) Resident comprehensive hunting license -- \$30.00. This license is valid only for use by an individual resident of the State.
- (8b) Nonresident comprehensive hunting license -- \$80.00. This license is valid for use by an individual within the State.
- (9) Disabled veteran lifetime combination hunting-fishing license -- \$7.50. This license is valid only for use by an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration. The license is valid for the life of the individual so long as he remains fifty percent (50%) or more disabled.
- (10) [Reserved.]
- (11) Age 70 lifetime sportsman combination ~~hunting-fishing~~ license -- \$10.00. This license is valid only for use by an individual resident of the State who has attained the age of 70 years. The license is valid for the life of the individual.
- (12) Totally disabled resident combination hunting-fishing license -- \$7.50. This license is valid only for use by an

individual resident of the State who is totally disabled (physically incapable of being gainfully employed). This license is valid for the life of the individual so long as he remains totally disabled."

Sec. 2. G.S. 113-271(d) reads as rewritten:

"(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

- (1) Repealed by Session Laws 1979, c. 830, s. 1.
- (1a) Resident Sportsman Combination License -- \$40.00. This license is valid only for use by an individual resident of the State.
- (1b) Resident comprehensive fishing licenses valid only for use by individual residents of the State:
 - a. One day -- \$10.00.
 - b, c. Repealed by Session Laws 1987, c. 156, s. 8.
 - d. Annual -- \$25.00.
- (1c) Lifetime Sportsman Combination Licenses -- These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue.
 - a. Type I available only to an individual under one year of age -- \$200.00.
 - b. Type Y available only to an individual under 12 years of age -- \$350.00.
 - c. Type A available to a resident individual of any age -- \$500.00.
 - d. Type N available to a nonresident individual of any age -- \$1,000.
- (2) Resident Combination Hunting-Fishing License -- \$20.00. This license is valid only for use by an individual resident of the State.
- (2a) Resident State Fishing License -- \$15.00. This license is valid only for use by an individual resident of the State.
- (2b) Lifetime Resident Comprehensive Fishing License -- \$250.00. This license is valid only for use by an individual resident of the State.
- (3) Resident County Fishing License -- \$10.00. This license is valid only for use by an individual resident of the State within the county in which he resides.
- (4) Resident one-day State fishing license valid only for use by an individual resident of the State during the day indicated: -- \$5.00.
 - a.-c. Repealed by Session Laws 1987, c. 156, s. 8.

- (4a) Nonresident Sportsman Combination License -- \$130.00. This license is valid for use by an individual within the State.
- (4b) Nonresident comprehensive fishing licenses valid for use by an individual within the State only during the day, consecutive days, or year indicated:
 - a. One day -- \$15.00.
 - b. Three days -- \$25.00.
 - c. Repealed by Session Laws 1987, c. 156, s. 8.
 - d. Annual -- \$50.00.
- (5) Nonresident State Fishing License -- \$30.00. This license is valid for use by an individual within the State.
- (6) Nonresident variable short-term State fishing licenses which are valid only for use by an individual within the State during the day or consecutive days indicated at the following rates:
 - a. One day -- \$10.00.
 - b. Three days -- \$15.00.
 - c. Repealed by Session Laws 1987, c. 156, s. 8.
- (7) Lifetime Fishing License for the Legally Blind -- No charge. This license is valid only for use by an individual resident of the State who has been certified by the Department of Human Resources as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.
- (8) Disabled Veteran Lifetime Combination Hunting-Fishing License -- \$7.50. This license is valid only for use by an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration. The license is valid for the life of the individual so long as he remains fifty percent (50%) or more disabled.
- (9) [Reserved.]
- (10) Age 70 Lifetime Sportsman Combination ~~Hunting-Fishing~~ License -- \$10.00. This license is valid only for use by an individual resident of the State who has attained the age of 70 years. The license is valid for the life of the individual.
- (11) Totally Disabled Resident Combination Hunting-Fishing License -- \$7.50. This license is valid only for use of an individual resident of the State who is totally disabled (physically incapable of being gainfully employed). This license is valid for the life of the individual so long as he remains totally disabled."

Sec. 3. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

H.B. 2099

CHAPTER 910

AN ACT TO AMEND CHAPTER 1073 OF THE 1959 SESSION LAWS TO PROVIDE THAT THE SHERIFF ISSUE PENDER COUNTY WEAPON PERMITS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1073 of the 1959 Session Laws, as further amended, is amended in Section 4 by deleting the phrase "Pender,".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

H.B. 2112

CHAPTER 911

AN ACT TO ALLOW PENDER COUNTY TO NAME AND ASSIGN STREET NUMBERS TO PRIVATE ROADS IN UNINCORPORATED AREAS.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 1319 of the 1979 Session Laws, as amended by Chapter 568, Session Laws of 1981, Chapter 98 of the 1983 Session Laws, Chapter 299 of the 1983 Session Laws, Chapter 900 of the 1987 Session Laws, Chapter 906 of the 1987 Session Laws, and Chapter 335, Session Laws of 1989, reads as rewritten:

"Sec. 3. This act applies only to Brunswick, Cabarrus, Cleveland, Avery, Stokes, Surry, Alamance, New Hanover, Pender, and McDowell Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

H.B. 2152

CHAPTER 912

AN ACT TO AUTHORIZE THE CITY OF GREENVILLE TO INCREASE THE NUMBER OF PARKING AUTHORITY COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-553 reads as rewritten:

"§ 160A-553. Appointment, removal, etc., of commissioners; quorum; chairman; vice-chairman, agents and employees.

An authority shall consist of ~~five~~ no less than five, nor more than seven commissioners appointed by the city council, and the city council shall designate the first chairman. No commissioner shall be a city official.

The commissioners who are first appointed shall be designated by the city council to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed by the city council and has qualified. Vacancies shall be filled by the city council for the unexpired term. Three commissioners shall constitute a quorum. A commissioner shall receive no compensation for his services, but he shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may, with the consent of the city council call upon the city attorney or chief law officer of the city for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. The city council may remove any member of the authority for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his defense upon not less than 10 days' notice."

Sec. 2. This act applies to the City of Greenville only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

H.B. 2247

CHAPTER 913

AN ACT ALLOWING THE CITY OF LUMBERTON AND THE
COUNTY OF MACON IN ARRIVING AT THE AMOUNT OF
CONSIDERATION FOR AN ECONOMIC DEVELOPMENT
CONVEYANCE TO TAKE INTO CONSIDERATION

PROSPECTIVE REVENUES GENERATED BY THE DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 266, Session Laws of 1989, reads as rewritten:

"Sec. 2. This act applies to the Cities of Kinston, Lumberton, and Wilson, and to the Counties of Duplin, Lenoir, Macon, and Wilson only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

H.B. 2401

CHAPTER 914

AN ACT TO REPEAL THE SUNSET ON THE LIMITATION ON INSURANCE REQUIRED ON WATERSLIDES.

The General Assembly of North Carolina enacts:

Section 1. Subsection (b) of Section 91 of Chapter 864 of the 1987 Session Laws is repealed.

Sec. 2. This act shall be effective on and after December 30, 1989.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

S.B. 336

CHAPTER 915

AN ACT TO AUTHORIZE COMMUNITY COLLEGE TUITION WAIVER FOR CERTAIN MEMBERS OF THE RADIO EMERGENCY ASSOCIATION CITIZENS TEAM (REACT).

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from

State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction and employees of the Department's Division of Adult Probation and Parole required to be certified pursuant to Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Human Resources Development Programs, juveniles of any age committed to the Division of Youth Services of the Department of Human Resources by a court of competent jurisdiction, and prison inmates. Provided further, tuition shall be waived for senior citizens attending institutions operating pursuant to this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

S.B. 465

CHAPTER 916

AN ACT TO CLARIFY THE MOTOR VEHICLE SALVAGE TITLE LAW AND TO REQUIRE CERTAIN DAMAGE DISCLOSURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-71.3 as amended by Chapter 455 of the 1989 Session Laws, reads as rewritten:

"§ 20-71.3. *Titles and registration cards to be branded.*

Motor Vehicle certificates of title and registration cards issued pursuant to G.S. 20-57 shall be branded. As used herein 'branded' means that the title and registration card shall contain a designation that discloses if the vehicle is classified as (a) Flood Vehicle, (b) Non-U.S.A. Vehicle, (c) Reconstructed Vehicle, (d) Salvage Motor Vehicle, or (e) Salvage Rebuilt Vehicle or other classification authorized by law. Any motor vehicle damaged by collision or other

occurrence which is to be retitled in this State shall be subject to preliminary and final inspections by the Enforcement Section of the Division, and the Division shall refuse to issue a title to a vehicle which has not undergone a preliminary inspection. Any motor vehicle which has been branded in another state shall be branded with the nearest applicable brand specified in this section, except that no junk vehicle or vehicle that has been branded junk in another state shall be titled or registered. A motor vehicle titled in another state and damaged by collision or other occurrence may be repaired and an unbranded title issued in North Carolina only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value and satisfactory evidence is given to the Division that the vehicle would be eligible for the issuance of an unbranded title in the state in which it is titled, value. The Commissioner shall prepare necessary forms and may adopt regulations required to carry out the provisions of this Part 3A. The title shall reflect the branding until surrendered to or cancelled by the Commissioner."

Sec. 2. G.S. 20-71.4(a) reads as rewritten:

"(a) It shall be unlawful and constitute a misdemeanor for any ~~person~~ transferor who knows or reasonably should know that a motor vehicle has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle exceeds twenty-five percent (25%) of its fair market retail value, or that the motor vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle, to fail to disclose that fact in writing to the transferee prior to transfer of the vehicle, any vehicle up to five model years old. Failure to disclose any of the above information will also result in civil liability under G.S. 20-348. The Commissioner shall prepare forms to carry out the provisions of this section."

Sec. 3. This act shall become effective October 1, 1990 and shall apply to transactions occurring on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

S.B. 1421

CHAPTER 917

AN ACT TO AMEND THE LAW RELATING TO THE RALEIGH FIREMEN'S SUPPLEMENTAL RETIREMENT FUND.

The General Assembly of North Carolina enacts:

Section 1. Section 2(a) of Chapter 421 of the 1969 Session Laws, as amended by Section 1 of Chapter 504 of the 1975 Session

Laws and Section 1 of Chapter 328 of the 1979 Session Laws, reads as rewritten:

"(a) Each retired fireman of the City who has retired with twenty (20) years service or more as a City fireman shall be entitled to and shall receive an annual supplemental retirement benefit equal to one share for each full year of service as a full-time and fully-paid fireman of the City; provided, in no event shall any retired fireman be entitled to or receive in any year an annual benefit in excess of ~~eight hundred one thousand dollars (\$800.00)~~ (\$1,000)."

Sec. 2. None of the provisions of this act shall create an additional liability for the Raleigh Firemen's Supplemental Retirement Fund or the State of North Carolina unless sufficient funds are available to pay fully for the liability.

Sec. 3. This act shall apply to the City of Raleigh only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

S.B. 1461

CHAPTER 918

AN ACT RELATING TO ZONING PROCEDURES OF THE CITY OF HIGH POINT.

The General Assembly of North Carolina enacts:

Section 1. The city council may require, by ordinance, that a two-thirds vote of all the members of the city council shall be required to adopt an ordinance or approve a permit which has been recommended for denial by the planning agency.

Sec. 2. The planning agency and city council may act on a request for modification of zoning regulations or boundaries submitted upon petition of : (i) the owner(s) of property subject to the modification, or (ii) the city council.

Sec. 3. Terms used in this act shall have the same meaning as in Article 19 of Chapter 160A of the General Statutes.

Sec. 4. The provisions of this act are effective notwithstanding any other provision of law, and shall apply only to the City of High Point.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

S.B. 1462

CHAPTER 919

AN ACT RELATING TO ASSESSMENTS FOR UNDERGROUND ELECTRICAL WIRING IN THE CITY OF HIGH POINT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-216 is amended by adding a new subsection to read:

"(4a) Placing underground electrical wiring, conduits and appurtenances upon petition for the improvement signed by at least a majority in number of the owners of property to be assessed, who must represent at least a majority of all the lineal feet of frontage of the lands abutting the improvement and to be assessed."

Sec. 2 This act only applies to the City of High Point.

Sec. 3 This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

S.B. 1463

CHAPTER 920

AN ACT TO AMEND THE LAW RELATING TO THE FIREMEN'S PENSION AND DISABILITY FUND IN THE CITY OF HIGH POINT.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 680 of the 1959 Session Laws, as amended by Section 2 of Chapter 524 of the 1961 Session Laws, is amended by deleting the phrase "fifty dollars (\$50.00)" and substituting the phrase "two hundred dollars (\$200.00)".

Sec. 2. None of the provisions of this act shall create a liability for the City of High Point's Firemen's Pension and Disability Fund or the State of North Carolina unless sufficient current assets are available in the Fund to pay fully for the liability.

Sec. 3. This act applies to the City of High Point only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

S.B. 1497

CHAPTER 921

AN ACT TO AMEND THE CHARTER OF THE CITY OF ASHEBORO.

The General Assembly of North Carolina enacts:

Section 1. Sec. 1.4 of the Charter of the City of Asheboro being Chapter 481, Session Laws of 1967, is amended by deleting the last sentence therein.

Sec. 2. Sec. 3.3(c) of the Charter of the City of Asheboro is amended by deleting the word "Councilman" each time it appears therein and substituting in lieu thereof the words "Council Member."

Sec. 3. Sec. 3.4 of the Charter of the City of Asheboro is amended by deleting the word "Councilmen" in the caption and substituting in lieu thereof the words "Council Members."

Sec. 4. Sec. 3.5 of the Charter of the City of Asheboro is amended by deleting the word "Councilman" as it appears therein and substituting in lieu thereof the words "Council Member," and by deleting the word "July" as it appears therein and substituting in lieu thereof the word "January."

Sec. 5. Sec. 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9 and 4.10 of the Charter of the City of Asheboro are repealed and the following new sections added:

"Sec. 4.11. Filing of Candidates. Each qualified person who would offer himself as a candidate for nomination for the office of Mayor or Council member shall file with the Randolph County Board of Elections a statement giving notice of his candidacy for such nomination. Such statement shall be filed not earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the election, shall be accompanied by payment of a nonrefundable filing fee as determined by the City Council, which shall not be less than five dollars (\$5.00) nor more than one percent (1%) of the annual salary of the office sought, and shall be in the form as provided for under G.S. 163-294.2(a).

Sec. 4.12. Posting and Publication of List of Candidates; Notice of Primary. The board of elections shall exercise its powers and duties as provided for under G.S. 163-33(8).

Sec. 4.13. When Primary Required. If more than two candidates file for nomination for the office of Mayor, then a primary election shall be held to nominate two candidates for the office of Mayor in the regular municipal election. If more than 14 candidates file for nomination for the office of Council Member, then a primary election shall be held to nominate 14 of such candidates for the office of Council Member in the regular municipal election. If a primary is held for any office, then the names of the candidates nominated for such office in such primary, and the names of no other candidates for such office, shall appear on the official ballots at the regular municipal election.

Sec. 4.14. Time of Primary if Required. If a primary election shall be required for any office, then the same shall be held on the fourth Tuesday before the regular municipal election, under the same laws, rules and regulations applicable to the regular municipal election.

Sec. 4.15. Primary Ballots. If a primary election is required, the board of elections shall cause primary ballots to be printed and authenticated with the signature of the chairman of the board of elections or a facsimile thereof. The ballots shall be printed as provided for under G.S. 163-299.

Sec. 4.16. Results of Primary. The board of elections shall follow the procedures as provided for under G.S. 163-294.

Sec. 4.17. Regular Municipal Election Ballots. The board of elections shall follow the procedures as provided for under G.S. 163-299.

Sec. 4.18. Regular Municipal Elections. Regular municipal elections shall be held on the Tuesday after the first Monday in November of each odd-numbered year. In each election, there shall be elected by the qualified voters of the city a Mayor and seven Council members.

Sec. 4.19. Regulation of Elections. All municipal elections shall be conducted in accordance with Chapter 163 of the General Statutes of North Carolina relating to municipal elections."

Sec. 6. Sec. 7.2 of the Charter of the City of Asheboro is amended by adding after the word "Collector" in line two thereof the following words: ", or the City Council may contract with an outside agent,".

Sec. 7. Sec. 7.3 of the Charter of the City of Asheboro is amended by deleting the words "City Accountant" in the caption and substituting in lieu thereof the words "Finance Officer" and deleting the words "City Accountant" as it appears on lines one and two and substituting in lieu thereof the words "Finance Officer"; and deleting the words "Municipal Fiscal Control Act" as it appears in line three and substituting in lieu thereof the words "Local Government Budget and Fiscal Control Act".

Sec. 8. Sec. 7.4 of the Charter of the City of Asheboro is amended by deleting the words "City Accountant" in line three and substituting in lieu thereof the words "Finance Officer".

Sec. 9. Sec. 8.1 of the Charter of the City of Asheboro is amended as follows:

- (1) By deleting the word "depository" in line three and substituting in line three thereof the word "depositories."
- (2) By deleting the word "institution" in line three and substituting in lieu thereof the word "institutions."

- (3) By deleting the words "Municipal Fiscal Control Act" in line nine and substituting in lieu thereof the words "Local Government Budget and Fiscal Control Act".

Sec. 10. Section 8.3 of the Charter of the City of Asheboro is repealed.

Sec. 11. Section 9.1 and Section 9.2 of the Charter of the City of Asheboro are repealed and the following new section added:

"Sec. 9.3. Use and Disposal of Real or Personal Property. The City Council shall have the power granted by Chapter 160A, Article 12, of the General Statutes to sell or lease any real or personal property."

Sec. 12. Section 10.1 of the Charter of the City of Asheboro is amended by deleting all of subsection (a) and subsection (b) and substituting the following subsection (a) and subsection (b):

"(a) The City of Asheboro Police Force shall have all the powers invested in law enforcement officers by statute or common law within the corporate limits of the City and these powers shall be extended one mile outside of the corporate limits of the City.

(b) The jurisdiction of the City of Asheboro Police Force shall include all property owned by or leased to the city, whether located within or outside the corporate limits."

Sec. 13. Section 11.5 of Charter of the City of Asheboro is amended by deleting the words "Article 9, Chapter 160" and substituting in lieu thereof the words "Article 10, Chapter 160A."

Sec. 14. Section 11.6 of the Charter of the City of Asheboro is amended by deleting the words "Article 9, Chapter 160" and substituting in lieu thereof the words "Article 10, Chapter 160A."

Sec. 15. Section 12.1 of the Charter of the City of Asheboro is amended by deleting the words "G.S. 160-241" in line three and substituting in lieu thereof the words "G.S. 160A-216."

Sec. 16. Section 13.2 of the Charter of the City of Asheboro is amended as follows:

(a) By deleting the words "one mile" in line three and substituting in lieu thereof the words "the zoning jurisdiction."

(b) By deleting the words "Article 15 of Chapter 160" in line seven and substituting in lieu thereof the words "Article 19 of Chapter 160A."

(c) By deleting the words "pursuant to G.S. 160-200(28)" in line eight.

Sec. 17. Sec. 1.5 of the Charter of the City of Asheboro, as added by Chapter 170, Session Laws of 1979, is repealed.

Sec. 18. Sec. 14.4(d) of the Charter of the City of Asheboro is amended by deleting the words "of the Airport Authority in the airport fund as provided in Section 14.6" beginning in line eight and

substituting in lieu thereof the words "appropriated to the Airport Authority in each annual budget ordinance".

Sec. 19. Sec. 14.6 of the Charter of the City of Asheboro is repealed.

Sec. 20. Sec. 15.2 of the Charter of the City of Asheboro is amended by deleting the words "one hundred dollars (\$100.00)" in line four and substituting in lieu thereof the words "five hundred dollars (\$500.00)."

Sec. 21. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

S.B. 1527

CHAPTER 922

AN ACT TO PROVIDE REFUNDS OF
CHARLOTTE/MECKLENBURG MEALS TAX PAID BY
CERTAIN NONPROFIT AND GOVERNMENTAL ENTITIES
ON PURCHASES ELIGIBLE FOR SALES TAX REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws, is further amended by adding at the end of Section 7 a new subsection to read:

"(d) Refunds. The local administrative authority shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared foods and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. 105-164.14 of the sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) shall apply to refunds to nonprofit entities; the time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) shall apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection shall provide any information required by the local administrative authority to substantiate the claim."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

AN ACT TO AUTHORIZE COUNTIES TO MAKE SPECIAL ASSESSMENTS FOR STREET LIGHTS IN RESIDENTIAL SUBDIVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-185 reads as rewritten:

" § 153A-185. Authority to make special assessments.

A county may make special assessments against benefited property within the county for all or part of the costs of:

- (1) Constructing, reconstructing, extending, or otherwise building or improving water systems;
- (2) Constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;
- (3) Acquiring, constructing, reconstructing, extending, renovating, enlarging, maintaining, operating, or otherwise building or improving
 - a. Beach erosion control or flood and hurricane protection works; and
 - b. Watershed improvement projects, drainage projects and water resources development projects (as those projects are defined in G.S. 153A-301).
- (4) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets, as provided in G.S. 153A-205.
- (5) Providing street lights and street lighting in a residential subdivision, as provided in G.S. 153A-206.

A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project."

Sec. 2. Article 9 of Chapter 153A of the General Statutes is amended by adding at the end a new section to read:

" § 153A-206. Street light assessments.

(a) Authorization. A county may annually levy special assessments against benefited property in a residential subdivision within the county and not within a city for the costs of providing street lights and street lighting pursuant to the procedures provided in this Article. The provisions of this Article, other than G.S. 153A-186, G.S. 153A-187 and G.S. 153A-190 through G.S. 153A-193, apply to street light assessments under this section.

(b) Basis of Assessment. The estimated costs of providing street lights and street lighting shall be apportioned among all benefited property on the basis of the number of lots served, or subject to being served, by the street lights, at an equal rate per lot.

(c) Amount of Assessment. The county shall determine the amount of the assessments on the basis of an estimate of the cost of constructing or operating the street lights during the ensuing year, and the board of commissioners' determination of the amount of the assessment is conclusive. In determining the total cost to be included in the assessment, the board may also include estimated costs of necessary legal services, projected utility rate increases, and the costs to the county of administering and collecting the assessment.

(d) Procedure. The county may approve the levy of street light assessments under this section upon petition of at least two-thirds of the owners of the lots within the subdivision. The request or petition shall include an estimate from the appropriate utility of the charge for providing street lights and street lighting within the subdivision for one year. Upon approval of the petition, the petitioning owner or owners shall pay to the tax collector the total estimated assessment amount for the ensuing year as determined by the county. This payment shall be set aside by the county tax office in escrow as security for payment of the assessments.

(e) Collection and Administration. The county shall levy the street light assessments on an annual basis and shall pay the costs of providing street lights and street lighting to the appropriate utility on a periodic basis. The assessment amount shall be adjusted on an annual basis in order to maintain in the escrow account an amount equal to the estimated cost of providing street lighting plus related expenses for the ensuing year."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2041

CHAPTER 924

AN ACT TO AMEND THE LAW REGARDING THE CARY LOCAL SUPPLEMENTAL RETIREMENT BENEFIT FUND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 159 of the 1985 Session Laws reads as rewritten:

"Sec. 2. Disbursements. Notwithstanding the provisions of G.S. 118-7, the Board of Trustees of the Local Firemen's Relief Fund of the Town of Cary shall as soon as practicable after July 1 of each

year, but in no event later than October 1, transfer to the 'Local Supplemental Retirement Benefit Fund' all income resulting from investments of funds belonging to the Cary Local Firemen's Relief Fund, divide the income earned in the preceding calendar year upon investments of funds belonging to the Local Firemen's Relief Fund into equal shares, and disburse the same as a Local Supplemental Retirement Benefit in accordance with Section 3 of this act. If income from investments is more than what is needed to pay the Local Supplemental Retirement Benefit, the excess funds shall be put back into the Local Firemen's Relief Fund."

Sec. 2. Section 4(a) of Chapter 159 of the 1985 Session Laws reads as rewritten:

"(a) Each retired volunteer fire fighter of the Town of Cary who has retired with 20 or more years of fire service as a fire fighter, ~~and who fighter~~ and has attained the age of 55 ~~55~~ and each full-time paid fire fighter of the Town of Cary with 30 or more years of fire service as a fire fighter who has attained the age of 55 is entitled to and shall receive an annual supplemental retirement benefit equal to one share for each full year of service as a fire fighter; provided, in no event shall any ~~retired~~ fire fighter be entitled to or receive in any year an annual benefit in excess of one thousand ~~two~~ eight hundred dollars ~~(\$1,200)~~ (\$1,800)."

Sec. 3. Section 5 of Chapter 159 of the 1985 Session Laws reads as rewritten:

"Sec. 5. If, for any reason, the Fund is insufficient to pay in full any pension benefits, or other charges, then all benefits shall be reduced ~~pro rata~~, and paid according to Section 3 of this act, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a benefit payment has been reduced."

Sec. 4. None of the provisions of this act shall create a liability for the Cary Local Firemen's Supplemental Retirement Benefit Fund nor to the State of North Carolina unless sufficient current assets are available in the Fund to pay fully for the liability.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2084

CHAPTER 925

AN ACT TO AUTHORIZE THE VILLAGE OF BALD HEAD ISLAND TO CONTRACT FOR WATER SUPPLY AND PRESSURE FOR FIRE PROTECTION PURPOSES WITHOUT COMPLYING WITH THE BID STATUTES AND TO IMPOSE SPECIAL ASSESSMENTS.

The General Assembly of North Carolina enacts:

Section 1. The provisions of Article 8 Chapter 143 of the General Statutes shall not apply to contracts entered into and construction and repair projects undertaken, including the purchase of materials, supplies, apparatus and equipment, by the Village of Bald Head Island for the purpose of securing adequate water supply and pressure for fire protection. This section shall not apply to contracts entered into and projects undertaken by the Village for purposes of potable water supply.

Sec. 2. The Bald Head Island Village Council may make special assessment against benefitted property within the corporate limits for the total costs to the Village of projects undertaken pursuant to Section 1 of this act. In addition to the bases of assessments provided under G.S. 160A-218, the council may assess at an equal monetary amount per benefitted property. "Benefitted property" shall include condominium units, townhouses, improved real estate, unimproved real estate, and any and all other interests in real estate to which is assigned a separate identifiable parcel number by the Brunswick County Tax Office and which is subject to valuation and annual ad valorem taxation and which lie, or any portion of which lie within one thousand lineal feet of any main, pipe, or other point in the system from which water may be distributed for fire fighting purposes. Such equal monetary assessment of benefitted property shall be without regard to the value or any other bases as set forth in G.S. 160A-218. Special assessments made under this section shall be subject to the provisions and requirements of Article 10 of Chapter 160A of the General Statutes.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2092

CHAPTER 926

AN ACT TO PROVIDE FOR COMPLIMENTARY FISHING LICENSES FOR RESIDENTS OF REST HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-271(d) reads as rewritten:

"(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Repealed by Session Laws 1979, c. 830, s. 1.

(1a) Resident Sportsman Combination License -- \$40.00. This license is valid only for use by an individual resident of the State.

- (1b) Resident comprehensive fishing licenses valid only for use by individual residents of the State:
 - a. One day -- \$10.00.
 - b. c. Repealed by Session Laws 1987, c. 156, s. 8.
 - d. Annual -- \$25.00.
- (1c) Lifetime Sportsman Combination Licenses -- These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue.
 - a. Type I available only to an individual under one year of age -- \$200.00.
 - b. Type Y available only to an individual under 12 years of age -- \$350.00.
 - c. Type A available to a resident individual of any age -- \$500.00.
 - d. Type N available to a nonresident individual of any age -- \$1,000.
- (2) Resident Combination Hunting-Fishing License -- \$20.00. This license is valid only for use by an individual resident of the State.
- (2a) Resident State Fishing License -- \$15.00. This license is valid only for use by an individual resident of the State.
- (2b) Lifetime Resident Comprehensive Fishing License -- \$250.00. This license is valid only for use by an individual resident of the State.
- (3) Resident County Fishing License -- \$10.00. This license is valid only for use by an individual resident of the State within the county in which he resides.
- (4) Resident one-day State fishing license valid only for use by an individual resident of the State during the day indicated: -- \$5.00.
 - a.-c. Repealed by Session Laws 1987, c. 156, s. 8.
- (4a) Nonresident Sportsman Combination License -- \$130.00. This license is valid for use by an individual within the State.
- (4b) Nonresident comprehensive fishing licenses valid for use by an individual within the State only during the day, consecutive days, or year indicated:
 - a. One day -- \$15.00.
 - b. Three days -- \$25.00.
 - c. Repealed by Session Laws 1987, c. 156, s. 8.
 - d. Annual -- \$50.00.
- (5) Nonresident State Fishing License -- \$30.00. This license is valid for use by an individual within the State.

- (6) Nonresident variable short-term State fishing licenses which are valid only for use by an individual within the State during the day or consecutive days indicated at the following rates:
 - a. One day -- \$10.00.
 - b. Three days -- \$15.00.
 - c. Repealed by Session Laws 1987, c. 156, s. 8.
- (7) Lifetime Fishing License for the Legally Blind -- No charge. This license is valid only for use by an individual resident of the State who has been certified by the Department of Human Resources as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.
- (8) Disabled Veteran Lifetime Combination Hunting-Fishing License -- \$7.50. This license is valid only for use by an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration. The license is valid for the life of the individual so long as he remains fifty percent (50%) or more disabled.
- (9) [Reserved.]
- (10) Age 70 Lifetime Combination Hunting-Fishing License -- \$10.00. This license is valid only for use by an individual resident of the State who has attained the age of 70 years. The license is valid for the life of the individual.
- (11) Totally Disabled Resident Combination Hunting-Fishing License -- \$7.50. This license is valid only for use of an individual resident of the State who is totally disabled (physically incapable of being gainfully employed). This license is valid for the life of the individual so long as he remains totally disabled.
- (12) Rest Home Resident Fishing License -- No charge. This license is valid only for use of an individual resident of the State who resides in a domiciliary home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as he remains a resident of a domiciliary home."

Sec. 2. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2094

CHAPTER 927

AN ACT TO CONFIRM THE CORPORATE LIMITS OF THE CITY OF BAKERSVILLE.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the City of Bakersville are a 360 degree circle with a radius of one-half mile from the dome of the Courthouse in said City.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2119

CHAPTER 928

AN ACT TO AUTHORIZE DAVIE COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. *Occupancy tax.*

(a) Authorization and Scope. The Davie County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county tax administrator in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county tax administrator under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

(e) Distribution and use of tax revenue. Davie County shall, on a monthly basis, deposit in a special account thirty-three and one-third percent (33-1/3%) of the net proceeds of the occupancy tax. Funds in the special account may be used only to promote travel and tourism in Davie County and to finance tourism related capital projects in the county. However, any tax proceeds in the special account that have not been appropriated after three years following the date they were deposited in the account shall be remitted to the general fund of Davie County and may be used for any lawful purpose.

Davie County shall, on a monthly basis, remit the remaining sixty-six and two-thirds percent (66-2/3) of the net proceeds of the tax to its general funds and may use these funds for any lawful purpose. As used in this subsection, "net proceeds" means gross proceeds, including penalties and interest, less the cost to the county of

administering and collecting the tax, as determined by the finance office.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Davie County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2121

CHAPTER 929

AN ACT TO AUTHORIZE THE BOARD OF COMMISSIONERS OF DAVIE COUNTY TO ADOPT AN ORDINANCE PROHIBITING THE DISCHARGE OF FIREARMS OR PELLET GUNS FROM THE ROADWAYS AND RIGHTS-OF-WAY IN DAVIE COUNTY, AND TO AUTHORIZE THE DAVIE COUNTY BOARD OF EDUCATION TO CONVEY OR RELEASE ANY REMAINING INTERESTS IN CERTAIN REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of any other law, including G.S. 153A-129 and Article 22 of Chapter 113 of the General Statutes, the Board of Commissioners of Davie County may enact an ordinance prohibiting the discharge of any firearm or pellet gun from, on, across, or over the roadway or right-of-way of any public road, street, or highway in Davie County, except when used in defense of person or property, or when used pursuant to lawful directions of law enforcement officers.

Sec. 2. Any ordinance adopted by the county pursuant to this act may provide for fines and penalties for violation of the ordinance pursuant to the provisions of G.S. 153A-123, and any such ordinance shall be enforceable by law enforcement officers of the Wildlife

Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Sec. 3. Notwithstanding any other provision of law, the Davie County Board of Education may convey or release by good and sufficient deed at private sale, with or without monetary consideration, any or all remaining property interests it possesses in the following tracts of land:

- (1) The property described in a deed dated October 2, 1939, to the president and secretary of the Kappa Club, recorded in Book 41, page 448 in the office of the Register of Deeds for Davie County;
- (2) The property described in a deed dated May 4, 1942, to the president and secretary of the Woman's Club of Cana, recorded in Book 41, page 370 in the office of the Register of Deeds for Davie County;
- (3) The property described in a deed dated April 7, 1958, to the trustees of Center Development Association, recorded in Book 57, page 629 in the office of the Register of Deeds for Davie County;
- (4) The property described in a deed dated July 19, 1971, to Farmington Community Association, Inc., recorded in Book 84, page 411 in the office of the Register of Deeds for Davie County;
- (5) The property described in a deed dated July 19, 1971, to Smith Grove Development Center, Incorporated, recorded in Book 84, page 433 in the office of the Register of Deeds for Davie County;
- (6) The property described in a deed dated July 19, 1971, to the Davie County Board of County Commissioners, recorded in Book 84, page 413 in the office of the Register of Deeds for Davie County.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2168

CHAPTER 930

AN ACT TO REGULATE THE USE TO WHICH THE EXCESS PROCEEDS OF THE WINDSOR FIREMEN'S LOCAL RELIEF FUND MAY BE PUT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-84-35 reads as rewritten:

" § 58-84-35. *Disbursement of funds by trustees.*

The board of trustees shall have entire control of the funds derived from the provisions of this Article, and shall disburse the funds only for the following purposes:

- (1) To safeguard any fireman in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of his duties as a fireman.
- (2) To provide a reasonable support for those actually dependent upon the services of any fireman who may lose his life in the fire service of his town, city, or State, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.
- (2.1) To provide assistance, upon approval by the Secretary of the State Firemen's Association, to a destitute member fireman who has served honorably for at least five years.
- (3) Repealed by Session Laws 1985, c. 666, s. 61.
- (4) To provide for the payment of any fireman's assessment in the Firemen's Fraternal Insurance Fund of the State of North Carolina if the board of trustees finds as a fact that said fireman is unable to pay the said assessment by reason of disability.
- (5) To provide for benefits of supplemental retirement, workers compensation, and other insurance and pension protection for firemen otherwise qualifying for benefits from the Firemen's Relief Fund as set forth in Article 85 of this Chapter.
- (6) To provide for educational benefits to firemen and their dependents who otherwise qualify for benefits from the Firemen's Relief Fund as set forth in Article 85 of this Chapter.
- (7) To provide safety equipment and other motorized equipment for the use and protection of the firemen.

Notwithstanding any other provisions of law, no expenditures shall be made pursuant to subsections (5) and (6) of this section unless the State Firemen's Association has certified that such expenditures will not render the Fund actuarially unsound for the purposes of providing the benefits set forth in subsections (1), (2), and (4) of this section. If, for any reason, funds made available for subsections (5) and (6) of this section shall be insufficient to pay in full any benefits, the benefits pursuant to subsections (5) and (6) shall be reduced pro rata for as long as the amount of insufficient funds exists. No claim shall accrue with respect to any amount by which a benefit under subsections (5) and (6) shall have been reduced."

Sec. 2. This act applies to the Windsor Fire Department Firemen's Relief Fund only and authorizes a one-time expenditure not to exceed thirty thousand dollars (\$30,000) but at no time shall the amount of that Fund be reduced to less than fifty thousand dollars (\$50,000), or the amount necessary to make the Fund actuarially sound, whichever is more, because of expenditures made pursuant to G.S. 58-84-35(7) added by Section 1 of this act.

Sec. 3. None of the provisions of this act shall create a liability for the Windsor Firemen's Relief Fund nor the State of North Carolina unless sufficient current assets are available in the Fund to pay fully for the liability.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2189

CHAPTER 931

AN ACT TO INCREASE THE AMOUNT THAT CAN BE RECEIVED IN BENEFITS FROM THE LEXINGTON FIREMEN'S SUPPLEMENTAL RETIREMENT FUND.

The General Assembly of North Carolina enacts:

Section 1. Section 6.1(c)(3) of the Charter of the City of Lexington, being Chapter 906, Session Laws of 1981, as amended by Chapter 462, Session Laws of 1983, reads as rewritten:

"No person shall receive in any calendar year more than ~~one thousand dollars (\$1,000)~~ two thousand five hundred dollars (\$2,500) in supplemental retirement benefits under the provisions of this section."

Sec. 2. None of the provisions of this act shall create an additional liability for the Lexington Firemen's Supplemental Retirement Fund nor the State of North Carolina unless current assets are available in the Fund to pay fully for the additional liability.

Sec 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2193

CHAPTER 932

AN ACT TO ALLOW THE HARNETT COUNTY BOARD OF COMMISSIONERS, AFTER PUBLIC HEARING, TO EXTEND THE BOUNDARIES OF ANY VOTED FIRE PROTECTION DISTRICT OUT TO FIVE ROAD MILES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 960, Session Laws of 1987, reads as rewritten:

"Sec. 2. This act applies to ~~Cleveland County~~ Cleveland and Harnett Counties only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2245

CHAPTER 933

AN ACT TO AUTHORIZE THE ISSUANCE OF NOT IN EXCESS OF SEVENTY-FIVE MILLION DOLLARS BONDS OF THE STATE TO PROVIDE FUNDS, WITH ANY OTHER AVAILABLE FUNDS, FOR STATE PRISON FACILITIES, SUCH AUTHORIZED BONDS TO BE ISSUED WITHOUT AN ELECTION DURING THE BIENNIUM ENDED JUNE 30, 1991, IN AN AMOUNT NOT IN EXCESS OF SUCH AUTHORIZED AMOUNT AND NOT IN EXCESS OF TWO-THIRDS OF THE AMOUNT BY WHICH THE STATE'S OUTSTANDING INDEBTEDNESS SHALL HAVE BEEN REDUCED DURING THE 1987-89 BIENNIUM, AND TO RAISE THE PRISON POPULATION CAP.

The General Assembly of North Carolina enacts:

Section 1. *Short title.* This act shall be known and may be cited as the "Prison Facilities Legislative Bond Act of 1990."

Sec. 2. *Findings and determinations.* It is the intent and purpose of the General Assembly by this act to provide for the issuance of general obligation bonds of the State in order to facilitate the payment of the capital costs required in connection with providing additional prison facilities.

Sec. 3. *Definitions.* As used in this act, unless the context otherwise requires:

- (1) "Bonds" means the bonds issued under this act.
- (2) "Cost" means, without intending thereby to limit or restrict any proper definition of such word in financing the cost of State prison facilities as authorized by this act,
 - a. The cost of constructing, reconstructing, enlarging, acquiring and improving prison facilities, and acquiring equipment and land therefor.
 - b. The cost of engineering, architectural and other consulting services as may be required.
 - c. Administrative expenses and charges,

- d. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements, financial and legal consultants and related costs of bond and note issuance, to the extent and as determined by the State Treasurer, and
 - e. Any other costs and expenses necessary or incidental to the purposes of this act.
- (3) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.
- (4) "Notes" means the notes issued under this act.
- (5) "Par formula" means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:
- a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible,
 - b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or
 - c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

Sec. 4. *Authorization of bonds and notes.* The State Treasurer is hereby authorized, by and with the consent of the Council of State as herein provided, to issue and sell at one time or from time to time in the biennium ending June 30, 1991, general obligation bonds of the

State to be designated "State of North Carolina Capital Improvement Bonds" or notes of the State as herein provided, in an aggregate principal amount not to exceed seventy-five million dollars (\$75,000,000), said amount not being in excess of two-thirds of the amount by which the State's outstanding indebtedness was reduced during the biennium ended June 30, 1989, for the purpose of providing funds, with any other available funds, for the uses authorized in this act.

If the seventy-five million dollars (\$75,000,000) maximum principal amount of bonds and notes herein authorized shall be in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the biennium ended June 30, 1989, and the amount of bonds and notes issued hereunder shall on that account be less than seventy-five million dollars (\$75,000,000), the difference between the proceeds of said bonds and notes and the seventy-five million dollars (\$75,000,000) aggregate bond proceeds set forth above may be made up from other available sources or the costs of the authorized uses may be reduced.

Sec. 5. *Uses of bond and note proceeds.* The proceeds of bonds and notes shall be used for financing the cost of State prison facilities, under the supervision of the Department of Correction, as herein provided, including, without limitation, the cost of constructing capital facilities, renovating or reconstructing existing facilities, acquiring equipment related thereto, purchasing land, paying costs of issuance of bonds and notes and paying contractual services necessary for the completion of the purposes of this act.

The proceeds of bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated the "State Prison Facilities Legislative Bond Fund of 1990" and shall be disbursed as herein provided.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any prison facilities authorized by this act may be placed by the State Treasurer in the State Prison Facilities Legislative Bond Fund of 1990 or in a separate fund and shall be disbursed, to the extent permitted by the terms of such grant or grants, without regard to any limitations imposed by this act.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for the cost of State prison facilities, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at

the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Comptroller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes, as it may be amended from time to time.

The Office of State Budget and Management shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations, the Chairpersons of the Senate and House Appropriation Committees, and the Fiscal Research Division on the expenditure of moneys from the State Prison Facilities Bond Fund. The reports shall continue until the completion of the projects provided for in the State Prison Facilities Legislative Bond Fund of 1990.

Sec. 6. *Allocation of proceeds.*

- (1) *Descriptions, custodial levels, beds, projected allocations.* The proceeds of bonds and notes shall be allocated and expended for paying the cost of prison facilities, to the extent and as provided in this act and subject to change as herein provided, as follows:

<u>Project Description</u>	<u>Custodial Level</u>	<u>Beds</u>	<u>Projected Allocation</u>
Caswell Correctional Center	Medium	104	\$ 3,456,536
Columbus Correctional Center	Medium	104	3,087,200
Pender Correctional Center	Medium	208	4,610,628
Western Institution	Close	480	28,724,300
Burke Youth Center	Minimum	100	2,782,956
Randolph Correctional Center	Medium	208	6,239,363
Montgomery Correctional Center	Medium	104	4,227,592
N.C. Correctional Institution for Women (A & B Dormitory Replacement)	Medium	208	3,720,110
Anson or Lenoir Correctional Institution	Medium	520	16,625,417

Contingencies

1,525,898

Total

\$75,000,000

The project listed as "Anson or Lenoir Correctional Institution" shall be constructed in Anson County, unless the County of Lenoir in a timely fashion makes sufficient land available to the State for the project at no cost to the State, and the land is found suitable by the Director of the Budget, in which case the Director of the Budget may locate the project in Lenoir County.

- (2) *Increases in projected allocations.* Projected allocations set forth above may be increased to reflect the availability of other funds, including, without limitation, contingency funds, income earned on the investment of bond and note proceeds and the proceeds of any grants.
- (3) *Contingency funds.* The amount allocated for contingencies set forth above shall be placed by the State Treasurer in a special account in the State Prison Facilities Legislative Bond Fund of 1990 to be designated the "State Prison Facilities Contingency Account." The funds in the State Prison Facilities Contingency Account shall be disbursed in accordance with the procedures herein established for disbursements from the State Prison Facilities Legislative Bond Fund of 1990. The funds in the State Prison Facilities Contingency Account shall be expended for paying the cost of projects, including, without limitation, the costs of issuance of bonds and notes, increased project costs resulting from construction costs exceeding projected costs, inflationary factors and changes in projects and allocations.
- (4) *Administration.* The Office of State Budget and Management may contract for and supervise all aspects of administration, technical assistance, design, construction or demolition of prison facilities in order to implement the providing of prison facilities under the provisions of this act without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-131, 143-132, 143-134, 143-135.26, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113-66, 133-1.1(b), 133-1.1(g) and 143-408.1; provided, however, of the funds allocated under the provisions of this act for the construction of prison facilities, the Office of State Budget and Management shall have a verifiable ten percent (10%) goal for participation by

minority and women-owned businesses. All contracts for the design, construction, or demolition of prison facilities shall include a penalty for failure to complete the work by a specified date. In implementing the providing of prison facilities under the provisions of this act, the Office of State Budget and Management shall endeavor to contract for and supervise the administration, technical assistance, design, construction and demolition of prison facilities such that, of the projects described in subsection (1), prison facilities providing at least 1,556 beds shall be completed and placed in service within 12 months of the date that bonds are issued pursuant to this act.

- (5) *Changes.* The Director of the Budget is empowered, when the Director determines it is in the best interest of the State and the State prison system to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular institution within the aggregate amount of funds available under this act including the proceeds of any investment earnings. Prior to taking any action under this subsection, the Governor may consult with the Advisory Budget Commission.
- (6) *Quarterly reports.* The Office of State Budget and Management shall provide quarterly reports to the Chairman of the Appropriations Committee and the Base Budget Committee in the Senate, the Chairman of the Appropriations Committee in the House, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division as to any changes in projects and allocations made under this section.

Sec. 7. *Issuance of bonds and notes.*

- (1) *Terms and conditions.* Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be

provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

- (2) *Signatures; form and denomination; registration.* Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery and bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as said Chapter may be amended from time to time, as well as under this act.
- (3) *Manner of sale; expenses.* Subject to determination by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or

otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate or rates of interest which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(4) *Notes; repayment.*

- a. By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money, and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:
 1. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;
 2. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;
 3. For the renewal of any loan evidenced by notes herein authorized;
 4. For the providing of prison facilities as herein authorized; and
 5. For refunding bonds or notes as herein authorized.
 - b. Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.
- (5) *Refunding bonds and notes.* By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act, as it may be amended from time to time, for the purpose of refunding bonds or notes issued pursuant to this act. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured.

- (6) *Tax exemption.* Bonds and notes and their transfer (including any profit made on the sale thereof) shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes. The interest on bonds and notes shall not be subject to taxation as to income, nor shall the bonds and notes be subject to taxation when constituting a part of the surplus of any bank, trust company or other corporation.
- (7) *Investment eligibility.* Bonds and notes are hereby made securities in which all public officers, agencies and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State or any political subdivision is now or may hereafter be authorized by law.
- (8) *Faith and credit.* The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes.

Sec. 8. *Variable interest rates.* In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

- (1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;
- (2) Be additionally supported by credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity:

- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and
- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Sec. 9. *Interpretation of act.*

(a) *Additional method.* The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) *Liberal construction.* This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

(c) *Inconsistent provisions.* Insofar as the provisions of this act are inconsistent with the provisions of any general laws, or parts thereof, the provisions of this act shall be controlling.

(d) *Severability.* If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Effective November 1, 1990, G.S. 148-4.1 reads as rewritten:

" § 148-4.1. *Release of inmates.*

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable level, he shall direct the Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose.

(b) Except as provided in subsection (c) and (e), only inmates who are otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of this Chapter may be released under this section.

(c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible for early parole under this section nine months prior to the discharge date otherwise applicable, and six months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2.

(d) If the number of prisoners housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of ~~48,715~~ 19,324 for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of ~~48,715~~ 19,324.

From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of ~~48,715~~ 19,324, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred.

(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of ~~48,715~~ 19,324, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving.

(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed ~~48,715~~ 19,324.

(g) In order to meet the requirements of this section, the Parole Commission shall not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under G.S. 14-17. The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A."

Sec. 11. Effective June 30, 1991, G.S. 148-4.1(d) as amended by Section 10 of this act reads as rewritten:

"(d) If the number of prisoners housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of ~~19,324~~ 20,435 for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of ~~19,324~~ 20,435.

From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of ~~19,324~~ 20,435, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred."

Sec. 12. Effective July 1, 1991, G.S. 148-4.1(e) as amended by Section 10 of this act reads as rewritten:

"(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of ~~19,324~~ 20,435, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving."

Sec. 13. Effective July 1, 1991, G.S. 148-4.1(f) as amended by Section 10 of this act reads as rewritten:

"(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed ~~19,324~~ 20,435."

Sec. 14. The Secretary of Correction may advance or delay the effective date of Sections 10 through 13 of this act by not more than 45 days from the dates provided in this act, based on the availability or lack thereof of prison space.

Sec. 15. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2268

CHAPTER 934

AN ACT TO REMOVE A DESCRIBED AREA FROM THE CORPORATE LIMITS OF THE TOWN OF ELM CITY.

The General Assembly of North Carolina enacts:

Section 1. The following described area is removed from the corporate limits of the Town of Elm City:

In Wilson County, BEGINNING at a point in the center of Parker Street Extension, said point being in L.M. Moore's southerly property line, as shown by a map entitled "Don H. Lamm", recorded in Plat Book 18, Page 85 in the Wilson County Registry, thence from said point of beginning with and along the center of Parker Street Extension, S 45 deg. 29' 06" W 66.85 feet, S 48 deg. 59' 53" W 75.00 feet, S 53 deg. 06' 27" W 100.00 feet, S 60 deg. 11' 29" W 100.01 feet, S 64 deg. 54' 05" W 100.01 feet, S 66 deg. 56' 00" W 400.41 feet, S 66 deg. 26' 09" W 99.97 feet, S 65 deg. 44' 53" W 100.01 feet, S 62 deg. 44' 37" W 100.00 feet, S 56 deg. 07' 05" W 100.02 feet, S 49 deg. 14' 21" W 100.00 feet, S 44 deg. 14' 36" W 100.02 feet and S 39 deg. 06' 45" W 81.78 feet, to a point cornering; thence leaving said road N 81 deg. 46' 38" W 92.82 feet to a point in the easterly property line of the Juanita Matthews Heirs property, cornering; thence along the said Matthews heirs property lines N 15 deg. 17' 53" E 427.87 feet, S 74 deg. 16' 16" E 164.43 feet and N 14 deg. 08' 12" E 550.83 feet to a point in L.M. Moore's southerly property line, cornering; thence along the said Moore's southerly property line S 82 deg. 30' 00" E 976.38 feet to the point of beginning, containing 10.76 acres and being all of the property on the northerly side of Parker Street Extension, as shown by the above mentioned map.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2287

CHAPTER 935

AN ACT TO AUTHORIZE A BOND REFERENDUM ON THE ISSUANCE OF TWO HUNDRED MILLION DOLLARS GENERAL OBLIGATION BONDS OF THE STATE, TO BE VOTED ON BY THE QUALIFIED VOTERS OF THE STATE, TO PROVIDE FUNDS, WITH ANY OTHER AVAILABLE FUNDS, FOR STATE PRISON AND YOUTH SERVICES FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. *Short Title.* This act shall be known and may be cited as the "State Prison and Youth Services Facilities Bond Act."

Sec. 2. *Findings and Determinations.* It is hereby found and determined as follows:

- (1) Providing adequate and sufficient prison and youth services facilities in North Carolina is of vital concern to the citizens of North Carolina and the legislative, executive, and judicial branches of government;
- (2) Notwithstanding significant new prison construction over the past several years, additional prison construction is necessary to meet constitutional standards, replace outmoded facilities and to add additional prison capacity;
- (3) Adding to the pressure on prison capacity are those young people who are released from training school and recidivate to prison. It is important that existing youth services facilities be renovated and new, safe and secure facilities constructed for at-risk and delinquent youth to learn and practice life skills which are essential to responsible citizenship; and
- (4) It is the intent and purpose of the General Assembly by this act to provide for a vote of the people regarding the issuance of general obligation bonds of the State in order to facilitate the payment of the capital costs required in connection with providing additional and improving existing prison and youth services facilities.

Sec. 3. *Definitions.* As used in this act, unless the context otherwise requires:

- (1) 'Bonds' means bonds issued under this act.
- (2) 'Cost' means, without intending thereby to limit or restrict any proper definition of such word in financing the cost of State prison and youth services facilities as authorized by this act,
 - a. The cost of constructing, reconstructing, enlarging, acquiring and improving facilities, and acquiring equipment and land therefor,
 - b. The cost of engineering, architectural and other consulting services as may be required,
 - c. Administrative expenses and charges,
 - d. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements, financial and legal consultants and related costs of bond and note issuance, to the extent and as determined by the State Treasurer, and

- e. Any other costs and expenses necessary or incidental to the purposes of this act.
- (3) 'Credit facility' means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.
- (4) 'Notes' means notes issued under this act.
- (5) 'Par formula' means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:
- a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible,
 - b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or
 - c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

Sec. 4. *Authorization of Bonds and Notes.* Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing bonds in the election called and held as hereinafter provided, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Prison and Youth Services Facilities Bonds", with such additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as herein

provided, in an aggregate principal amount not exceeding two hundred million dollars (\$200,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

Sec. 5. *Uses of Bond and Note Proceeds.* The proceeds of bonds and notes shall be used for the purposes of financing the cost of State prison facilities, under the supervision of the Department of Correction, and youth services facilities, under the supervision of the Department of Human Resources, including, without limitation, the cost of constructing capital facilities, renovating or reconstructing existing facilities, acquiring equipment related thereto, purchasing land, paying costs of issuance of bonds and notes and paying contractual services necessary for the completion of the purposes of this act. State prison facilities shall also include capital facilities for the Youthful Offenders Forestry Program, sometimes known as "Bridge," established pursuant to Chapter 738, 1987 Session Laws, and capital facilities for the Intensive Motivational Program for Alternative Correctional Treatment, sometimes known as "Impact".

The proceeds of bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated the "State Prison and Youth Services Facilities Bond Fund" and shall be disbursed as herein provided.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any prison and youth services facilities authorized by this act may be placed by the State Treasurer in the State Prison and Youth Services Facilities Bond Fund or in a separate fund and, shall be disbursed, to the extent permitted by the terms of such grant or grants, without regard to any limitations imposed by this act.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for the cost of State prison and youth services facilities, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Comptroller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of

Chapter 143 of the General Statutes, as it may be amended from time to time.

The Office of State Budget and Management in respect of prison facilities and the Department of Human Resources in respect of youth services facilities shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations, the Chairpersons of the Senate and House Appropriation Committees, and the Fiscal Research Division on the expenditure of moneys from the State Prison and Youth Services Facilities Bond Fund.

Sec. 6. *Allocation of Proceeds.* (a) *Determination.* The proceeds of bonds and notes shall be allocated and expended for the purposes of paying the cost of prison and youth services facilities as provided in this act, the particular projects within such purposes and the projected allocations therefor to be determined by legislative action of the General Assembly at the 1991 session or any subsequent session. Nothing in this act or as a result of the approval of the bonds at the election herein provided for shall be deemed to restrict the right of the General Assembly at the 1991 session or at a subsequent session to:

- (1) Establish a procedure whereby projected allocations set forth in subsequent legislation may be increased or decreased to reflect the availability of other funds, including, without limitation, contingency funds, income earned on the investment of bond and notes proceeds and the proceeds of grants.
- (2) Establish a contingency account and to provide for an allocation of bond proceeds thereto. The funds in such contingency account may be used to pay the cost of projects, the costs of issuance of bonds and notes, and increased project costs resulting from construction costs exceeding projections, inflationary factors and changes in projects and allocations. The funds allocated to the contingency account shall be placed by the State Treasurer in a separate account in the State Prison and Youth Services Facilities Bond Fund and shall be disbursed in accordance with the procedures herein established for disbursements from the State Prison and Youth Facilities Bond Fund.
- (3) Empower the Director of the Budget, when the Director determines it is in the best interest of the State and the State prison and youth services system to do so, to change the projects and allocations therefor set forth in subsequent legislation, including, without limitation, the power to change the type of project to be provided at a particular institution, to increase or decrease the amount allocated to a

particular institution within the aggregate amount of funds available under this act including the proceeds of any investment earnings, to delete a project, to move a project from one institution to another institution and to add a replacement project, the Governor having the right to consult with the Advisory Budget Commission prior to taking any such action.

- (4) Empower the Office of State Budget and Management to contract for and supervise all aspects of administration, technical assistance, design, construction or demolition of prison facilities in order to implement the providing of prison facilities under the provisions of this act without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-131, 143-132, 143-134, 143-135.26, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113-66, 133-1.1(b), 133-1.1(g) and 143-408.1; provided, however, of the funds allocated under the provisions of this act for the construction of prison facilities, the Office of State Budget and Management shall have a verifiable ten percent (10%) goal for participation by minority and women-owned businesses. All contracts for the design, construction, or demolition of prison facilities shall include a penalty for failure to complete the work by a specified date.
- (5) Empower the Department of Human Resources to contract for and supervise all aspects of administration, technical assistance, design, construction or demolition of youth services facilities in order to implement the providing of youth services facilities under the provisions of this act.

(b) *Quarterly Reports.* The Office of State Budget and Management in respect to prison facilities and the Department of Human Resources in respect to youth services facilities shall provide quarterly reports to the Chairman of the Appropriations Committee and the Base Budget Committee in the Senate, the Chairman of the Appropriations Committee in the House, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division as to any changes in projects and allocations.

Sec. 7. Election. The question of the issuance of two hundred million dollars (\$200,000,000) State of North Carolina Prison and Youth Services Facilities bonds authorized by this act shall be submitted to the qualified voters of the State at an election to be held on Tuesday, November 6, 1990. Any other primary, election or referendum validly called or scheduled by law at the time the bond

election provided for in this section is held may be held as called or scheduled. Notice of the bond election shall be given by publication twice in a newspaper or newspapers having general circulation in each county in the State, and the election and the registration of voters therefor shall be held under and in accordance with the general laws of the State. Absentee ballots shall be authorized in the election.

The State Board of Elections shall reimburse the counties of the State for all necessary expenses incurred in holding the election which are in addition to those which would have otherwise been incurred, the same to be paid out of the Contingency and Emergency Fund.

Voting machines may be used in accordance with the rules and regulations prescribed by the State Board of Elections. The State Board of Elections may also cause to be printed and distributed, to the extent necessary, ballots for use in the election. The question to be used in the voting machines and ballots shall be in substantially the following form:

"For the issuance of two hundred million dollars (\$200,000,000) State of North Carolina Prison and Youth Services Facilities Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, for paying the cost of State prison and youth services facilities.

Against the issuance of two hundred million dollars (\$200,000,000) State of North Carolina Prison and Youth Services Facilities Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, for paying the cost of State prison and youth services facilities."

If a majority of those voting thereon in the election shall vote in favor of the issuance of the bonds, the bonds may be issued as herein provided. If a majority of those voting thereon in the election shall vote against the issuance of the bonds, the bonds shall not be issued.

The result of the election shall be canvassed and declared as provided by law for the holding of elections for State officers and the result thereof certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Sec. 8. *Issuance of Bonds and Notes.* (a) *Terms and Conditions.* Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or

without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) *Signatures; Form and Denomination; Registration.* Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery and bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as said Chapter may be amended from time to time, as well as under this act.

(c) *Manner of Sale; Expenses.* Subject to determination by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at

one time or from time to time at such rate or rates of interest, which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) *Notes; Repayment.*

- (1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

- a. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;
- b. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;
- c. For the renewal of any loan evidenced by notes herein authorized;
- d. For the providing of prison and youth services facilities as herein authorized; and
- e. For refunding bonds or notes as herein authorized.

- (2) Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.

(e) *Refunding Bonds and Notes.* By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act, as it may be amended from time to time, for the purpose of refunding bonds or notes issued pursuant to this act. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured.

(f) *Tax Exemption.* Bonds and notes and their transfer (including any profit made on the sale thereof) shall be exempt from all State, county and municipal taxation or assessment, direct or indirect,

general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes. The interest on bonds and notes shall not be subject to taxation as to income, nor shall the bonds and notes be subject to taxation when constituting a part of the surplus of any bank, trust company or other corporation.

(g) *Investment Eligibility.* Bonds and notes are hereby made securities in which all public officers, agencies and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) *Faith and Credit.* The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes.

(i) *Date of Issuance or Sale.* No bonds or notes may be issued or sold under this act prior to the beginning of the 1991-92 fiscal year.

Sec. 9. *Variable Interest Rates.* In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

- (1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;
- (2) Be additionally supported by a credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;
- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and

- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Sec. 10. *Interpretation of Act.* (a) *Additional Method.* The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) *Liberal Construction.* This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

(c) *Inconsistent Provisions.* Insofar as the provisions of this act are inconsistent with the provisions of any general laws, or parts thereof, the provisions of this act shall be controlling.

(d) *Severability.* If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.B. 2335

CHAPTER 936

AN ACT TO IMPLEMENT THE JOINT REPORT TO PROVIDE MANAGEMENT INCENTIVES AND FLEXIBILITY FOR THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA AND TO REQUIRE THE CREATION AND ENHANCEMENT OF A PROGRAM OF PUBLIC SERVICE AND TECHNICAL ASSISTANCE TO THE PUBLIC SCHOOLS.

Whereas, the 1989 General Assembly in Chapter 500 of the 1989 Session Laws directed the Board of Governors and the Office of State Budget and Management to review the need for management incentives and flexibility at the campus level in order to achieve budget savings and increased efficiency of operations; and

Whereas, the work of the Board of Governors and the Office of State Budget and Management has been completed in accordance with the legislative directive and a joint report entitled, "Management Incentives and Flexibility," has been made to the 1989 General Assembly, 1990 Regular Session; and

Whereas, the 1989 General Assembly desires that the joint report be fully implemented in phases beginning with the 1990-91 fiscal year; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Budget Flexibility. (a) The following budgetary changes are authorized effective July 1, 1990, and shall be reflected in the 1991-93 budget presentations to the 1991 General Assembly and in the 1991-93 budget certifications to the constituent institutions of The University of North Carolina:

- (1) The existing budget purposes or programs of General Academic Support, Student Services, Institutional Support, and Physical Plant Operations shall be consolidated into a new purpose or program entitled "General Institutional Support."
- (2) Summary level objects of expenditure shall be used for budgetary control purposes for the nonpersonnel accounts of Supplies and Materials, Current Obligations, Utilities, Fixed Charges and Expenses, Capital Outlay, and Library Books and Journals.
- (3) Among the nonpersonnel objects of expenditure of Supplies and Materials, Current Obligations, Fixed Charges and Expenses, and Capital Outlay, budget adjustments may be authorized by the constituent institutions within a single budget purpose or program without prior approval from the Director of the Budget.
- (4) Unspent utilities funds at the constituent institutions may be utilized to fund utility and energy-savings projects through their operating budgets, subject to the approval of the Director of the Budget.

- (5) For budgetary reporting and accounting purposes, the constituent institutions of The University of North Carolina shall continue to provide expenditure data at such detailed levels as required by the Director of the Budget. Presentation, control, and reporting of salary and salary-related objects of expenditure shall be in accordance with applicable statutes and the directives of the Director of the Budget.
- (6) Detailed expenditure information for objects of expenditure for the existing budget purposes of General Academic Support, Student Services, Institutional Support, and Physical Plant Operations shall be available to the Appropriations Committees of the General Assembly on a regular basis.
- (7) Funds from the "General Institutional Support" budget purpose or program may be transferred into the "Regular Term Instruction" and "Libraries" budget purpose or program. These transfers shall be reported to the Board of Governors of The University of North Carolina annually. Funds may not be transferred from the "Regular Term Instruction" or "Libraries" budget purposes or program except in accordance with the provisions of G.S. 143-23(a1).
- (b) G.S. 116-36.3 is repealed.
- (c) G.S. 116-36.1(g) reads as rewritten:
 - "(g) As used in this section, 'trust funds' means:
 - (1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;
 - (2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;
 - (3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;
 - (4) Moneys collected by an institution to support extracurricular activities of students of the institution:

- (5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;
- (6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises ~~except student auxiliary services identified in G.S. 116-36.3~~, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;
- (7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care ~~provider, provider;~~
- (8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as 'trust funds,' except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State ~~agency, agency;~~
- (9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs."

Sec. 2. Overhead Receipts. (a) It is the intention of the General Assembly that overhead receipts derived from reimbursement of indirect costs on contracts and grants shall not continue to be budgeted as offsets to General Fund appropriations for current operations of the constituent institutions of The University of North Carolina.

(b) The base or continuation budget requests of the constituent institutions of The University of North Carolina presented to the 1991 General Assembly shall reflect a phased reduction in such offsets during the 1991-93 biennium. For the 1991-92 fiscal year this reduction shall lower the offset rate from thirty percent (30%) to twenty-five percent (25%), and for the 1992-93 fiscal year this reduction shall lower the offset rate from twenty-five percent (25%) to twenty percent (20%).

(c) At such time as the intention of the General Assembly with respect to phaseout of such offsets has been implemented in the budgets of the constituent institutions of The University of North Carolina, special fund codes for overhead receipts shall be transferred to the category of institutional trust funds for budgetary and accounting purposes.

Sec. 3. Purchasing Procedures. (a) G.S. 143-52 reads as rewritten:

" § 143-52. *Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.*

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of ~~five thousand dollars (\$5,000)~~ the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper of statewide circulation at least once and at least 10 days prior to the date designated for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such

bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

(b) G.S. 143-53(2) reads as rewritten:

"(2) Prescribing routine for securing bids on items that do not exceed five thousand dollars (\$5,000) in value the bid value benchmark established under the provisions of G.S. 143-53.1."

(c) Chapter 143 of the General Statutes is amended by adding a new section to read:

" § 143-53.1. Setting of benchmarks; increase by Secretary.

On and after July 1, 1990, the expenditure benchmark prescribed by G.S. 143-52 with respect to competitive bid procedures and the bid value benchmark authorized by G.S. 143-53(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ten thousand dollars (\$10,000); provided, the Secretary of Administration may, in his discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, 1992, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase."

(d) The Department of Administration, through the Division of Purchase and Contract, and in consultation with the constituent institutions of The University of North Carolina, shall undertake a

review of existing purchasing procedures for the purpose of making such modifications and consolidations of present procedures, consistent with sound procurement policies, as may be needed to expedite the acquisition of supplies, materials, and equipment required for the execution of research and other sponsored projects.

(e) G.S. 143-56 reads as rewritten:

" § 143-56. *Certain purchases excepted from provisions of Article.*

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

- (1) Published books, manuscripts, maps, pamphlets and periodicals.
- (2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than ~~five thousand dollars (\$5,000)~~ the expenditure benchmark established under the provisions of G.S. 143-53.1 or for group purchases made by hospitals through a competitive bidding purchasing program, as defined in G.S. 143-129.

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

Sec. 4. Sales and Use Taxes on Contract and Grant Purchases. G.S. 105-164.14(b) reads as rewritten:

"(b) The Secretary of Revenue shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E), educational institutions not operated for profit, churches, orphanages and other charitable or religious institutions and organizations not operated for profit of sales and use taxes paid under this Article, except under G.S. 105-164.4(4a), by such institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of such institutions or organizations. Sales and use tax liability indirectly incurred by such institutions and organizations on building

materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired for such institutions and organizations for carrying on their nonprofit activities shall be construed as sales or use tax liability incurred on direct purchases by such institutions and organizations, and such institutions and organizations may obtain refunds of such taxes indirectly paid. The Secretary of Revenue shall also make refunds semiannually to all other hospitals (not specifically excluded herein) of sales and use tax paid by them on medicines and drugs purchased for use in carrying out the work of such hospitals. This subsection does not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c). In order to receive the refunds herein provided for, such institutions and organizations shall file a written request for refund covering the first six months of the calendar year on or before the fifteenth day of October next following the close of said period, and shall file a written request for refund covering the second six months of the calendar year on or before the fifteenth day of April next following the close of that period. Such requests for refund shall be substantiated by such proof as the Secretary of Revenue may require, and no refund shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may require. Notwithstanding the foregoing provisions of this subsection, the constituent institutions of The University of North Carolina may obtain in the manner prescribed by this Article the refund of sales and use tax paid by them on or after January 1, 1992, for tangible personal property acquired by them through the expenditure of contract and grant funds."

Sec. 5. Over-Realized Receipts. (a) G.S. 143-27 reads as rewritten:

" § 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.

All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs anticipated in the budget authorized by the General Assembly, of maintenance of such institutions, departments, and

agencies; Provided, however, that if the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget finds that the appropriations from that Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund. Notwithstanding the foregoing provisions of this section, receipts within The University of North Carolina realized in excess of budgeted levels shall be available, up to a maximum of ten percent (10%) above budgeted levels, for each Budget Code, in addition to appropriations, to support the operations generating such receipts, as approved by the Director of the Budget.

The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on expenditures of receipts in excess of the amounts certified in General Fund Codes or Highway Fund Codes that did not result in a corresponding reduced allotment from appropriations from that Fund."

(b) Effective with the 1991-93 fiscal biennium, revenues from new or increased course fees authorized by the Board of Governors of The University of North Carolina and the associated expenditures shall be incorporated into the base or continuation budget requests of the constituent institutions of The University of North Carolina presented to the General Assembly. New or increased course fees approved by the Board of Governors after the operating budget is approved by the General Assembly may be budgeted with the approval of the Director of the Budget, but shall be incorporated into the next base budget requests of the constituent institutions.

Sec. 6. Personnel Administration. The Office of State Personnel and The University of North Carolina General Administration are directed to continue their discussions in the areas of the appropriate classifications of positions between those subject to the State Personnel Act (SPA) and those exempt from the State Personnel Act (EPA), development of guidelines to facilitate these classifications, and the need for campus flexibility in administering positions funded from contracts and grants.

Sec. 7. The Board of Governors of The University of North Carolina shall adopt standards to create and enhance an organized

program of public service and technical assistance to the public schools. This program shall:

- (1) Provide systematic access for public schools to consultation and advice available from members of the faculties of the constituent institutions;
- (2) Facilitate and encourage research in the public schools and the application of the results of this research;
- (3) Link the education faculties of the constituent institutions with public school teachers and administrators through public service requirements for the education faculties; and
- (4) Create partnerships among all constituent institutions, their schools or departments of education, and the maximum number of public schools that could benefit from these partnerships.

Sec. 8. This act shall become effective July 1, 1990, except that G.S. 116-36.1(g)(9) as added by Section 1(c) of this act shall become effective July 1, 1991, and except that Section 5(a) of this act shall become effective July 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

S.B. 928

CHAPTER 937

AN ACT TO SET THE PERCENTAGE RATE OF THE REGULATORY FEE TO BE PAID BY PUBLIC UTILITIES DURING THE 1990-91 FISCAL YEAR AT THE RATE THAT WAS IN EFFECT FOR THE 1989-90 FISCAL YEAR.

The General Assembly of North Carolina enacts:

Section 1. For the 1990-91 fiscal year, the percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve hundredths percent (0.12%) of each public utility's North Carolina jurisdictional revenues for each quarter.

Sec. 2. This act is effective upon ratification and applies to public utility North Carolina jurisdictional revenues earned on or after July 1, 1990.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

S.B. 1382

CHAPTER 938

AN ACT TO AUTHORIZE CLEVELAND, POLK AND TRANSYLVANIA COUNTIES TO COLLECT CERTAIN FEES IN THE SAME MANNER AS AD VALOREM TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 591, Session Laws of 1989, reads as rewritten:

"Sec. 2. This act applies to Ashe, Polk, Robeson, Transylvania, ~~and Wayne~~, and Cleveland Counties only."

Sec. 2. This act is effective upon ratification, and applies to fees imposed on or after January 1, 1991.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

S.B. 1392

CHAPTER 939

AN ACT TO MODIFY THE CORPORATE LIMITS OF THE TOWN OF PINEVILLE AND THE CITY OF CHARLOTTE.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Pineville are modified by removing therefrom the area described in Section 3 of this act.

Sec. 2. The corporate limits of the City of Charlotte are extended to include therein the area described in Section 3 of this act.

Sec. 3. The area which is the subject of this act is more fully described as follows:

Beginning at a point in the present Charlotte City limit line, said point being located where the centerline of Johnston Road (SR 3655) intersects the thread of McMullen Creek, said point also being on the present Pineville Town limit line, and further being located N 29-47-05 W, 283.78 feet from a P.K. nail set at the intersection of said Johnston Road and Walsh Boulevard.

Thence, from the Point of Beginning, the following courses along the centerline of Johnston Road; N 30-18-11 W, 473.49 feet to a point; thence, along the arc of a curve having a radius of 674.07 feet, concave to the southwest, a distance of 347.42 feet (chord being N 45-04-06 W, 343.59 feet) to a point; thence, N 59-50-00 W, 104.66 feet to a point; thence, along the arc of a curve having a radius of 1,041.74 feet, concave to the northeast, a distance of 468.39 feet (chord being N 46-57-10 W, 464.46 feet) to a point; thence, N 34-04-19 W, 46.07 feet to a point, said point being a common corner of the present Pineville Town limit line and the present Charlotte City limit line, and further being the intersection point of the centerline of Johnston Road and the extended common line of CNC Centers recorded in Deed Book 4969 Page 578 and A. D. Cannon, Jr. recorded in Deed Book 6093 Page 8 of the Mecklenburg County Registry. Thence, with the present Pineville Town limit line, said line

also being the aforementioned CNC Centers and Cannon common line, S 16-39-24 W, 60.07 feet to a point; thence, along the western proposed property line of Johnston Road the following courses; the arc of a curve having a radius of 888.83 feet concave to the northeast, a distance of 306.57 feet (chord being S 43-18-27 E, 326.15 feet) to a point; thence, S 53-50-01 E, 315.11 feet to a point; thence, along the arc of a curve, concave to the southwest, having a radius of 808.83 feet, a distance of 332.18 feet (chord being S 42-04-06 E, 329.85 feet) to a point; thence, S 30-18-10 E, 437.09 feet to the thread of McMullen Creek, said creek being the common line of the Charlotte City limit and the Pineville Town limit, also said line being the northwestern line of Treva Woods Townhouse Association recorded in Deed Book 3678 Page 272 of the aforementioned Registry; thence, with the thread of McMullen Creek and said common line N 38-57-37 E, 56.36 feet to the Point of Beginning. Containing 72,673 square feet (1.6683 ac.) and being generally a 50 foot strip within the present Pineville Town limits bounding Johnston Road (SR 3655).

Sec. 4. This act shall become effective January 2, 1991.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

S.B. 1401

CHAPTER 940

AN ACT TO AUTHORIZE DUPLIN COUNTY TO COLLECT CERTAIN FEES IN THE SAME MANNER AS AD VALOREM TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 591, Session Laws of 1989, reads as rewritten:

"Sec. 2. This act applies to Ashe, Duplin, Robeson, and Wayne Counties only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

S.B. 1408

CHAPTER 941

AN ACT TO PROVIDE FOR SUPPLEMENTAL FEES, LICENSES, WRITTEN EXAMINATIONS. AND CONTINUING EDUCATION FOR AGENTS WHO SELL MEDICARE SUPPLEMENT OR LONG-TERM CARE INSURANCE POLICIES; AND TO AMEND THE MEDICARE SUPPLEMENT

INSURANCE LAW IN ACCORDANCE WITH RECENT CONGRESSIONAL ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-33-25(c) is amended by adding the following new subdivision:

"(8) Medicare Supplement Insurance and Long-Term Care Insurance, as a supplement to a license for the kinds of insurance listed in subdivisions (1) and (2) of this subsection."

Sec. 2. G.S. 58-33-25 is amended by adding the following new subsection:

"(d2) A life, accident, and health license or an accident and health license authorizes an agent to sell Medicare supplement and long-term care insurance policies as defined respectively in Articles 54 and 55 of this Chapter, provided that the licensee takes and passes a supplemental written examination for such insurance as provided in G.S. 58-33-30(e) and pays the supplemental registration fee as provided in G.S. 58-33-125(c)."

Sec. 3. G.S. 58-33-30(e) reads as rewritten:

"(e) Examination.

- (1) After completion and filing of the application with the Commissioner, except as provided in G.S. 58-33-35, the Commissioner shall require each applicant for license as an agent or an adjuster to take a written examination as to his competence to be licensed. The applicant must take and pass the examination according to requirements prescribed by the Commissioner.
- (2) The Commissioner may require any licensed agent, adjuster, or motor vehicle damage appraiser to take and successfully pass an examination in writing, testing his competence and qualifications as a condition to the continuance or renewal of his license, if the licensee has been found guilty of any violation of any provision of Articles 1 through 67 of this Chapter. If an individual fails to pass such an examination, the Commissioner shall revoke all licenses issued in his name and no license shall be issued until such individual has passed an examination as provided in this Article.
- (3) Each examination shall be as the Commissioner prescribes and shall be of sufficient scope to test the applicant's knowledge of:
 - a. The terms and provisions of the policies or contracts of insurance he proposes to effect; or
 - b. The types of claims or losses he proposes to adjust; and

- c. The duties and responsibilities of such a license; and
 - d. The current laws of this State applicable to such a license.
- (4) The answers of the applicant to any such examination shall be written by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as he deems necessary reasonably to serve the convenience of both the Commissioner and applicants; Provided that the Commissioner is authorized to contract directly with persons for the processing of examination application forms and for the administration and grading of the examinations required by this section; the Commissioner is authorized to charge a reasonable fee in addition to the registration fee charged under G.S. 58-33-125, to offset the cost of the examination contract authorized by this subsection; and such contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes.
- (5) The Commissioner shall collect in advance the examination and registration fees provided in G.S. 58-33-125 and in subsection (4) of this section. The Commissioner shall make or cause to be made available to all applicants, for a reasonable fee to offset the costs of production, materials that he deems necessary for the applicants' proper preparation for such exams. The Commissioner is empowered to contract directly with publishers and other suppliers for the production of such preparatory materials, and contracts so let by the Commissioner shall not be subject to Article 3 of Chapter 143 of the General Statutes.

In addition to the examinations for the kinds of insurance specified in G.S. 58-33-25(c)(1) and (2), before any person may sell Medicare supplement or long-term care insurance policies defined respectively in Articles 54 and 55 of this Chapter, he must take and pass a supplemental written examination according to requirements prescribed by the Commissioner."

Sec. 4. G.S. 58-33-125(a) reads as rewritten:

"(a) The following table indicates the annual fees that are required for the respective licenses issued under this Article and Article 21 of this Chapter:

Adjuster	\$50.00
Adjuster, crop hail only	10.00
Agent appointment cancellation (paid by insurer)	5.00
Agent appointment, individual	10.00
Agent appointment, nonindividual	25.00

<u>Agent appointment, Medicare supplement and long-term care, individual</u>	10.00
<u>Agent appointment, Medicare supplement and long-term care, nonindividual</u>	20.00
Agent, overseas military	10.00
Broker, nonresident	50.00
Broker, resident	25.00
Limited representative	10.00
Limited representative cancellation (paid by insurer)	5.00
Motor vehicle damage appraiser	50.00
Surplus lines licensee, corporate	50.00
Surplus lines licensee, individual	50.00

These fees are in lieu of any other license fees. Fees paid by an insurer on behalf of a person who is licensed or appointed to represent the insurer shall be paid to the Commissioner on a quarterly or monthly basis, in the discretion of the Commissioner."

Sec. 5. G.S. 58-33-125(c) reads as rewritten:

"(c) Any person not registered who is required by law or administrative rule to secure a license shall, upon application for registration, pay to the Commissioner a fee of ten dollars (\$10.00). In the event additional licensing for other kinds of insurance is requested, a fee of ten dollars (\$10.00) shall be paid to the Commissioner upon application for registration for each additional kind of insurance.

In addition to the fees prescribed by this subsection, any person applying for a supplemental license to sell Medicare supplement and long-term care insurance policies shall pay an additional fee of fifteen dollars (\$15.00) upon application for registration for those kinds of insurance."

Sec. 6. G.S. 58-33-130 is amended by adding the following new subsection:

"(k) In addition to the 12 annual credit hours required of life or health insurance agents or brokers, in order to renew an appointment or license on and after January 1, 1993, every person holding a supplemental license under G.S. 58-33-25(d2) shall satisfactorily complete two annual credit hours in course instruction covering the principles of Medicare supplement and long-term care insurance, including changes in federal or North Carolina law relating to such insurance. Such additional two hours are not subject to the limitation in subsection (e) of this section."

Sec. 7. G.S. 58-33-30(d) is amended by adding a new subdivision to read:

"(3) Each applicant for a Medicare supplement and long-term care insurance license shall furnish evidence satisfactory to the Commissioner of successful completion of 10 hours of instruction, which shall in all cases include the principles of Medicare supplement and long-term care insurance and federal and North Carolina law relating to such insurance. An applicant who submits satisfactory evidence of having successfully completed an agent training course that has been approved by the Commissioner and that is offered by or under the auspices of an admitted life or health insurer or a professional insurance association satisfies the educational requirements of this subdivision."

Sec. 8. G.S. 58-54-15 reads as rewritten:

"§ 58-54-15. Minimum standards for benefits, marketing practices, compensation arrangements, reporting practices, and claims payments.

The Commissioner shall adopt rules, pursuant to G.S. 150B-13, to establish minimum standards for benefits, marketing practices, compensation arrangements, reporting practices, and claims payments under policies."

Sec. 9. G.S. 58-55-30 is amended by adding a new subsection to read:

"(k) The Commissioner shall adopt rules, pursuant to G.S. 150B-13, to establish minimum standards for marketing practices and compensation arrangements for long-term care insurance."

Sec. 10. All life, accident, and health or accident and health agents that are duly licensed on January 1, 1991, shall have until June 30, 1991, to comply with the requirements of Sections 1 through 5 of this act in order to sell Medicare supplement or long-term care insurance policies in this State.

Sec. 11. Sections 1 through 7 of this act shall become effective January 1, 1991. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

S.B. 1478

CHAPTER 942

AN ACT TO INCORPORATE THE TOWN OF GREENLEVEL IN ALAMANCE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Greenlevel is enacted to read:

"CHARTER OF THE TOWN OF GREENLEVEL.

"Chapter I.

"Incorporation and Corporate Powers.

"Section 1.1. Incorporation and corporate powers. The inhabitants of the Town of Greenlevel are a body corporate and politic under the name 'Town of Greenlevel'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"Chapter II.

"Corporate Boundaries.

"Sec. 2.1. Town boundaries. (a) Until modified in accordance with law, the boundaries of the Town of Greenlevel are as follows:
In Alamance County.

BEGINNING at a point in the center of the intersection of N. C. Route No. 49 and SR 1752 (Sandy Cross Road), the said point being identified as Point "1" on the map showing the Boundary of the Green Level Water & Sewer District and running thence South $86^{\circ} 00'$ East 230.0 Ft. to Point "2" on the said map; thence in a southerly direction parallel with N.C. Route No. 49, and 230.0 Ft. east of the center of the said Route, a distance of 4,682 Ft. to a point (Point "3") 230.0 Ft. northwest of the center of SR 1922; thence in an easterly direction parallel with SR 1922, and 230.0 Ft. north of the center of the said SR 1922, a distance of 4,300 Ft. to a point (Point "4"); thence South $28^{\circ} 30'$ East 835.0 Ft. to a point (Point "5"); thence South $20^{\circ} 30'$ West 776 Ft. to a point (Point "6"); thence South $43^{\circ} 00'$ West 687 Ft. to a point (Point "7"), the same being 230.0 Ft. east of SR 1747; thence in a southerly direction parallel with SR 1747, and 230.0 Ft. east of the said SR 1747, a distance of 1,205 Ft. to a point (Point "8"); thence in a westerly direction parallel with the same SR 1747, and 230.0 Ft. south of the said SR 1747, a distance of 5,040 Ft. to a point (Point "9"), the said point being 230.0 Ft. east of the center of NC Rt. #49; thence in a southerly direction parallel with NC Route #49, and 230.0 Ft. east of the said route, a distance of 1,299 Ft. to a point (Point "10"); thence south $87^{\circ} 30'$ west 230.0 Ft. to a point (Point "11"), the said point being 200 Ft. south of the center of the intersection of SR 1746 and N.C. Rt. #49; thence in a westerly direction parallel with SR 1746, and 200 Ft. south of the said SR 1746, a distance of 1,516 Ft. to a point (Point "12"); thence north $22^{\circ} 30'$ east 200 Ft. to a point in the center of SR 1746 (Point "13"); thence due north 628 Ft. to a point (Point "14"); thence north $16^{\circ} 00'$ east 1,750 Ft. to a point (Point "15") in the center of SR 1747; thence north $15^{\circ} 00'$ east 1,915 Ft. to a point in the center of SR 1753 (Point "16"); thence north $7^{\circ} 45'$ east 230.0 Ft. to a point (Point "17"); thence south $82^{\circ} 15'$ east 1,600 Ft. to a point (Point "18"); thence south $62^{\circ} 30'$ east 759 Ft. to a point (Point "19"), the

same being 230 Ft. west of the center of N.C. Route #49; thence in a northerly direction parallel with N.C. Route #49, and 230.0 Ft. west of a said route, a distance of 4,709 Ft. to a point (Point "20") in the center of SR 1752 (Sandy Cross Road); thence in an easterly direction along the center of SR 1752 (Sandy Cross Road) a distance of 230.9 Ft. to the point of the BEGINNING and containing 707.6 acres more or less.

"Chapter III.

"Governing Body.

"Sec. 3.1. Structure of governing body; number of members. The governing body of the Town of Greenlevel is the Town Council, which has five members.

"Sec. 3.2. Manner of electing Council. The qualified voters of the entire Town elect the members of the Council.

"Sec. 3.3. Term of office of Council members. Members of the Town Council are elected to four-year terms, except at the initial election in 1991, the three highest vote-getters who are elected shall be elected to four-year terms, and the next two highest vote-getters shall be elected to two-year terms. In 1993 and quadrennially thereafter, two members of the Council shall be elected for four-year terms. In 1995 and quadrennially thereafter, three members of the Council shall be elected for four-year terms.

"Sec. 3.4. Selection of Mayor; term of office. The Mayor shall be elected by the Council from among its membership to serve at its pleasure. The Mayor has the right to vote on all matters before the Council.

"Chapter IV.

"Elections.

"Sec. 4.1. Conduct of Town elections. The Town Council and Mayor shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

"Chapter V.

"Administration.

"Sec. 5.1. Mayor-Council plan. The Town of Greenlevel operates under the Mayor-Council plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes."

Sec. 2. From and after the effective date of this act, the citizens and property in the Town of Greenlevel shall be subject to municipal taxes levied for the year beginning July 1, 1990, and for that purpose the Town shall obtain from Alamance County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1990, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year

1990-91 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. If ad valorem taxes for fiscal year 1990-91 are adopted after August 1, 1990, they shall become due and payable at par 90 days after the adoption of the ordinance levying them, and thereafter as if they had been due on September 1, 1990, in accordance with the schedule in G.S. 105-360.

Sec. 3. Until members of the Town Council are elected in 1991 in accordance with the Town Charter and the law of North Carolina, Plese Corbett, Robert Farrington, Algene Tarpley, Theodore Howard, and Johnnie McBroom shall serve as members of the Town Council. The initial meeting of the Town Council shall be called by the Clerk to the Board of Commissioners of Alamance County.

Sec. 4. The Town of Greenlevel is eligible to receive distributions of State funds during fiscal year 1990-91 as if it had been incorporated with an effective date of June 30, 1990.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

S.B. 1494

CHAPTER 943

AN ACT TO ALLOW THE TOWN OF RICHFIELD TO BE INCLUDED WITHIN A RURAL FIRE PROTECTION DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 69-25.1 reads as rewritten:

" § 69-25.1. *Election to be held upon petition of voters.*

Upon the petition of thirty-five percent (35%) of the resident freeholders living in an area ~~lying outside the corporate limits of any city or town~~, which area is described in the petition and designated as

.....

(Here insert name)

Fire District,' the board of county commissioners of the county shall call an election in said district for the purpose of submitting to the qualified voters therein the question of levying and collecting a special tax on all taxable property in said district, of not exceeding fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation of property, for the purpose of providing fire protection in said district. If the voters reject the special tax under the first paragraph of this section, then no new election may be held under the first paragraph of this section within two years on the question of levying and collecting a special tax under the first paragraph of this section in that district,

or in any proposed district which includes a majority of the land within the district in which the tax was rejected.

Upon the petition of thirty-five percent (35%) of the resident freeholders living in an area which has previously been established as a fire protection district and in which there has been authorized by a vote of the people a special tax not exceeding ten cents (10¢) on the one hundred dollars (\$100.00) valuation of property within the area, the board of county commissioners shall call an election in said area for the purpose of submitting to the qualified voters therein the question of increasing the allowable special tax for fire protection within said district from ten cents (10¢) on the one hundred dollars (\$100.00) valuation to fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation on all taxable property within such district. Elections on the question of increasing the allowable tax rate for fire protection shall not be held within the same district at intervals less than two years."

Sec. 2. If the Town of Richfield is included within the boundaries of any rural fire protection district created under Article 3A of Chapter 69 of the General Statutes, G.S. 69-25.15 shall not apply as to any annexations by that town within that district.

Sec. 3. This act applies to the Town of Richfield only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

S.B. 1534

CHAPTER 944

AN ACT TO ESTABLISH FEES FOR PROCESSING APPLICATIONS FOR MINING PERMITS AND APPLICATIONS FOR MODIFICATIONS AND RENEWALS OF EXISTING MINING PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-290 is amended by adding a new subdivision to read:

"(4) a. The Commission may establish a fee schedule for the processing of permit applications and permit renewals and modifications. The fees may vary on the basis of the acreage, size, and nature of the proposed or permitted operations or modifications. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing applications for permits and permit renewals and modifications and for related

- compliance activities and safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant or class of applicants.
- b. The total amount of permit fees collected for any fiscal year may not exceed one-third of the total personnel and administrative costs incurred by the Department for processing applications for permits and permit renewals and modifications and for related compliance costs in the prior fiscal year, but in no event may they exceed two thousand five hundred dollars (\$2,500) for any application for a new permit or five hundred dollars (\$500.00) for any application for a permit renewal or modification.
- c. Fees collected under this subdivision shall be credited to the General Fund and may be used to:
1. Defray the expenses of any project or program, including education programs, supporting the permitting and compliance activities under Article 7 of Chapter 74 of the General Statutes;
 2. Establish additional permanent positions, under Chapter 126 of the General Statutes, to conduct permitting, compliance, and educational activities under Article 7 of Chapter 74 of the General Statutes; and
 3. Improve the efficiency and decrease the length of the processing period for permit applications.
- d. The Department shall make an annual report to the Joint Legislative Commission on Governmental Operations and the Director of the Fiscal Research Division on the cost of the State's mining permit program. The report shall include the fees established, collected, and disbursed under this section and any other information requested by the General Assembly or the Commission."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

S.B. 1586

CHAPTER 945

AN ACT TO ACCELERATE THE PAYMENT OF SALES TAXES AND GROSS RECEIPTS TAXES BY UTILITIES AND TO ACCELERATE THE PAYMENT OF WITHHELD INDIVIDUAL INCOME TAXES BY EMPLOYERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16 reads as rewritten:

" § 105-164.16. Report and payment of taxes.

(a) **Payment.** -- Taxes levied under this Article are due when a return is required to be filed. Every taxpayer liable for the tax imposed by this Article shall, within the specified time after the end of the appropriate reporting period, submit a return to the Secretary, on a form prescribed by the Secretary, stating the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. Each return shall be accompanied by a payment to the Secretary for the amount of taxes shown to be due on the return and shall be signed by the taxpayer or his agent. Returns that do not contain the required information shall not be accepted. When an unacceptable return is submitted, the Secretary shall require a corrected return to be filed.

(b) **General Reporting Periods.** -- Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than twenty-five dollars (\$25.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars (\$20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars (\$20,000) each month to file a return on a semimonthly basis. In determining the amount of tax due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting

period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount he remitted with his estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed.

(c) Sales Tax on Utility Services. -- ~~Taxes A return for taxes levied under G.S. 105-164.4(4a) and G.S. 105-164.4(4c) are 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c) is due and payable quarterly on or before the 30th day following the end of the calendar quarter in which the tax accrues, quarterly or monthly as specified in this subsection. A utility that is allowed to pay tax under G.S. 105-120 on a quarterly basis shall file a quarterly return. All other utilities shall file a monthly return. A quarterly return is due by the last day of the month following the quarter covered by the return. A monthly return is due by the last day of the month following the month in which the taxes accrue, except the return for taxes that accrue in May. A return for taxes that accrue in May is due by June 25.~~

A utility that is required to file a monthly return may file an estimated return for the first month, the second month, or both the first and second months in a quarter. A utility is not subject to interest on or penalties for an underpayment submitted with an estimated monthly return if the utility timely pays at least ninety-five percent (95%) of the amount due with a monthly return and includes

the underpayment with the company's return for the third month in the same quarter."

Sec. 2. G.S. 105-164.21A reads as rewritten:

"§ 105-164.21A. *Deduction for municipalities that sell electric power.*

A municipality that pays the retail sales tax imposed by this Article on electricity may deduct from the amount of tax payable by the municipality an amount equal to three percent (3%) of the difference between its gross receipts from sales of electricity for the preceding quarter reporting period and the amount paid by the municipality for purchased power and related services during that quarter reporting period."

Sec. 3. G.S. 105-116(b), as amended by Chapter 813 of the 1989 Session Laws, reads as rewritten:

"(b) ~~Payment.~~ Report and Payment. The tax imposed by this section is payable ~~when a report is required to be filed.~~ A company taxed under this section shall file a report on a quarterly basis, monthly or quarterly as specified in this subsection. A report is due quarterly. An electric power company or a natural gas company shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. An electric power company or a natural gas company is not subject to interest on or penalties for an underpayment of a monthly amount due if the company timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files. A water company or a public sewerage company shall pay tax quarterly when filing a report.

A quarterly report covers a calendar quarter and is due ~~within 30 days after the end of~~ by the last day of the month that follows the quarter covered by the report. A company shall submit a report on a form provided by the Secretary. The report shall include the company's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

- (1) The company's gross receipts for the reporting period from business inside and outside this State, stated separately.
- (2) The company's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under G.S. Chapter 159B or a municipality having an ownership share in a project established under that Chapter.

- (3) The amount of and price paid by the company for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.
- (4) For an electric power company or a natural gas company, the company's gross receipts from the sale within each municipality of the commodities and services described in subsection (a).

A company shall report its gross receipts on an accrual basis."

Sec. 4. G.S. 105-120(b), as amended by Chapter 813 of the 1989 Session Laws, reads as rewritten:

~~"(b) Payment. Report and Payment. The tax imposed by this section is payable when a report is required to be filed. A company taxed under this section shall file a report on a quarterly basis, monthly or quarterly as specified in this subsection. A report is due quarterly. A company that is liable for an average of less than three thousand dollars (\$3,000) a month in tax imposed by this section may, with the approval of the Secretary of Revenue, pay tax quarterly when filing a report. All other companies shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. A company is not subject to interest on or penalties for an underpayment of a monthly amount due if the company timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files.~~

A quarterly report covers a calendar quarter and is due ~~within 30 days after the end of~~ by the last day of the month that follows the quarter covered by the report. A company shall submit a report on a form provided by the Secretary. The report shall state the company's gross receipts for the reporting period from providing local telecommunications service and from providing local telecommunications service within each municipality served. A company shall report its gross receipts on an accrual basis."

Sec. 5. G.S. 105-163.1 reads as rewritten:

"§ 105-163.1. *Definitions.*

~~As used in this Article, The following definitions apply in this Article:~~

- (1) ~~"Secretary" means the Secretary of Revenue. Code. -- The Internal Revenue Code as enacted as of January 1, 1990, including any provisions enacted as of that date which become effective either before or after that date.~~
- (2) ~~"Corporation" includes an association or a joint stock company.~~

- (3) ~~"Dependent" means a dependent~~ Dependent. -- An individual with respect to whom an income tax exemption is allowed under the Code.
- (4) ~~The word "employee" means an~~ Employee. -- An individual, whether a resident or a nonresident in of this State, who performs or performed any service services in this State for wages or an individual domiciled in who is a resident of this State who and performs or performed any service services outside this State for wages. The word "employee," as used in this subdivision, is intended to include officers of corporations and elected public officials. The term does not include an ordained or licensed clergyman who elects to be considered self-employed under G.S. 105-163.1A. term includes an ordained or licensed clergyman who elects to be considered an employee under G.S. 105-163.1A. an officer of a corporation, and an elected public official.
- (5) ~~The word "employer" means this State, or any political subdivision thereof, the United States, or any agency or instrumentality of any one or more of the foregoing, or a person.~~ Employer. -- A person for whom an individual performs or performed any service as an employee; except that:
- a. ~~If the person, governmental unit, or agency thereof, for whom the individual performs or performed the service does not have control of the payment of the wages for such services, the term "employer" (except for the purposes of subdivision (6) of this section) means the person having control of the payment of such wages, and~~
- b. ~~In the case of a person paying wages on behalf of a nonresident person not engaged in trade or business within this State or on behalf of any governmental unit or agency thereof not located within this State, the term "employer" (except for purposes of subdivision (6) of this section) means such person.~~
- services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
- a. Controls the payment of wages to an individual for services performed for another.
- b. Pays wages on behalf of a person who is not engaged in trade or business in this State.

- c. Pays wages on behalf of a unit of government that is not located in this State.
- d. Pays wages for any other reason.
- (6) ~~The term "wages" means all remuneration (other than fees paid to a public official) for service performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid;~~
 - a. ~~For agricultural labor where such remuneration is paid to workers employed on the farm for services rendered on the farm in the production, harvesting, and transportation of agricultural products to market for the farmer-employer; or~~
 - b. ~~For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or~~
 - c. ~~For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars (\$50.00) or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:~~
 - 1. ~~On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or~~
 - 2. ~~Such individual was regularly employed (as determined under subparagraph 1 above) by such employer in the performance of such service during the preceding calendar quarter; or~~
 - d. ~~For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or~~
 - e. ~~To, or on behalf of, an employee or his beneficiary --~~
 - 1. ~~From or to a trust described in § 401(a) of the Code which is exempt from tax under § 501(a) of the Code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or~~

2. ~~Under or to an annuity plan which, at the time of such payment, meets the requirements of § 401(a) (3), (4), (5), and (6) of the Code.~~
- (7) ~~The term "transient employer" means an "employer" who is not a resident of this State and who temporarily engages in any activity within the State for the production of income. Without intending to exclude others who may come within the foregoing definition, any nonresident "employer" engaging in any such activity within the State which, as of any date, cannot be reasonably expected to continue for a period of 18 consecutive months shall be deemed to be temporarily engaged in such activity.~~
- (8) ~~"Fiduciary" means a Fiduciary. -- A guardian, a trustee, an executor, an administrator, a receiver, a conservator, or any other person acting in any a fiduciary capacity for any person, estate or trust, another.~~
- (9) ~~"Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. Fiscal year. -- Defined in section 441(e) of the Code.~~
- (10) ~~"Individual" means a Individual. -- A natural person.~~
- (11) ~~"Code" means the Internal Revenue Code as enacted as of January 1, 1989, and includes any provisions enacted as of that date which become effective either before or after that date. Miscellaneous payroll period. -- A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.~~
- (12) ~~"Payroll period" means a Payroll period. -- A period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period. an employer ordinarily pays wages to an employee of the employer.~~
- (13) ~~The word "person" means an Person. -- An individual, a fiduciary, a partnership, or a corporation and includes an officer or employee of a corporation or a member or employee of a partnership or of an individual proprietorship who as such officer, employee, or member is under a duty to perform an act in meeting the requirements of this Division. a corporation, or a unit of government. The term includes an officer or employee of a corporation, a member or employee of a partnership, and an employee of an individual proprietorship who, as officer, employee, or~~

member, is under a duty to perform an act in meeting the requirements of this Division.

- (14) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this Chapter or under regulations prescribed by the Secretary, "taxable year" means the period for which such return is made. Taxable year. -- Defined in section 441(b) of the Code.

(14a) Secretary. -- The Secretary of Revenue.

- (15) The term "net taxable income" means that part of the income of an individual which, during the taxable year of the individual, is subject to payment of an income tax thereon under the provisions of Article 4 of this Chapter. Wages. -- The term has the same meaning as in section 3401 of the Code except it does not include remuneration paid by a farmer for services performed on the farmer's farm in producing or harvesting agricultural products or in transporting the agricultural products to market."

Sec. 6. G.S. 105-163.1A reads as rewritten:

"§ 105-163.1A. Ordained or licensed clergyman may elect to be considered self-employed, an employee.

An ordained or licensed clergyman who performs services for a church of any religious denomination may file an election with the Secretary and the church he serves to be considered self-employed instead of an employee of the church. church instead of self-employed. Wages Until a clergyman files an election, amounts paid by a church to a clergyman who elects to be considered self-employed are not subject to withholding. A church shall withhold taxes from a clergyman's wages until after the clergyman files an election with it under this section."

Sec. 7. G.S. 105-163.2(a) reads as rewritten:

"(a) Every employer making payment of wages on or after January 1, 1960, shall deduct and withhold with respect to the wages of each employee for each payroll period an amount determined as follows:

An amount which, if an equal amount was collected for each similar payroll period with respect to a similar amount of wages for each payroll period during an entire calendar year, would aggregate or approximate the income tax liability of the employee under Article 4 of this Chapter after making allowance for the personal exemptions to which the employee would be entitled on the basis of his status during the payroll period and after making allowance for withholding

~~purposes for a deduction from wages of the amount of the standard deduction allowed under the Code less the amount by which the standard deduction has been increased under section 63(c)(4) of the Code and without making allowance for any other deductions. An employer shall deduct and withhold from the wages of each employee the State income taxes payable by the employee on the wages. For each payroll period, the employer shall withhold from the employee's wages an amount that would approximate the employee's income tax liability under Article 4 of this Chapter if the employer withheld the same amount from the employee's wages for each similar payroll period in a calendar year. In calculating an employee's anticipated income tax liability, the employer shall allow for the exemptions, deductions, and credits to which the employee is entitled under Article 4 of this Chapter. The amount of State income taxes withheld by an employer is held in trust for the Secretary."~~

Sec. 8. G.S. 105-163.3 reads as rewritten:

" § 105-163.3. Withholding in accordance with regulations.

The manner of withholding and the amount to be deducted and withheld under G.S. 105-163.2 shall be determined in accordance with tables, rules, and regulations ~~promulgated~~ adopted by the Secretary. The withholding exemption allowed by these tables, rules, and regulations shall, as nearly as possible, approximate the ~~exemptions~~ exemptions, deductions, and credits to which an employee would be entitled under the Code ~~less the amount by which the exemptions would be increased under section 151(d)(3) of the Code,~~ Article 4 of this Chapter."

Sec. 9. G.S. 105-163.4 reads as rewritten:

" § 105-163.4. Basis of determination of remuneration being wages. No withholding from reimbursement for expenses.

~~If any of the remuneration paid by an employer to an employee during any payroll period or during any miscellaneous period without reference to a payroll period constitutes actual. The amount an employer pays an employee as reimbursement of the employee for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer, then such amounts as are paid to reimburse the employee for such expenses are not to be considered as wages and no amounts shall be deducted and withheld therefrom. employer is not wages and is not subject to withholding under this Article."~~

Sec. 10. G.S. 105-163.6 reads as rewritten:

" § 105-163.6. Payment of amounts withheld; personal liability for failure to withhold; limitation of recovery. When employer must file returns and pay withheld taxes.

~~(a) Every employer required to deduct and withhold from an employee's wages under G.S. 105-163.2 shall, for the quarterly period beginning January 1, 1960, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period, make return and pay over to the Secretary the amounts required to be withheld under G.S. 105-163.2. Such returns shall be in such form and contain such information as the Secretary may prescribe. General. -- A return is due quarterly or monthly as specified in this section. A return shall be filed with the Secretary on a form prepared by the Secretary, shall report any payments of withheld taxes made during the period covered by the return, and shall contain any other information required by the Secretary.~~

Withheld taxes are payable quarterly, monthly, or within three banking days, as specified in this section. Withheld taxes shall be paid to the Secretary or to a financial institution with which the Secretary has entered a contract to receive payment of withheld taxes.

If the Secretary finds that collection of the amount of taxes this Article requires an employer to withhold is in jeopardy, the Secretary may require the employer to file a return or pay withheld taxes at a time other than that specified in this section.

~~(b) Notwithstanding any of the other provisions of this section, all transient employers shall make return and pay over to the Secretary on a monthly basis the amounts required to be withheld under G.S. 105-163.2. Such returns and payments to the Secretary by transient employers shall be made on or before the fifteenth day of the month following the month for which such amounts were deducted and withheld from the wages of his employees; except that the returns and payments for the month of December shall be made on or before the 31st day of the following month. Quarterly. -- An employer who withholds an average of less than five hundred dollars (\$500.00) of State income taxes from wages each month shall file a return and pay the withheld taxes on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.~~

~~(c) Notwithstanding any of the other provisions of this section, all employers engaged in any business which is seasonal shall make return and pay over to the Secretary on a monthly basis the amounts required to be withheld under G.S. 105-163.2. Such returns and payments to the Secretary by employers engaged in such seasonal business shall be made on or before the fifteenth day of the month following the month for which such amounts were deducted and withheld from the wages of his employees; except that the returns and payments for the month of December shall be made on or before the~~

~~31st day of the following month. Monthly. -- An employer who withholds an average of at least five hundred dollars (\$500.00) but less than two thousand dollars (\$2,000) from wages each month shall file a return and pay the withheld taxes on a monthly basis. A return for the months of January through November is due by the 15th day of the month following the end of the month covered by the return. A return for the month of December is due the following January 31.~~

~~(c1) Notwithstanding any of the other provisions of this section, every employer required to deduct and withhold under the provisions of G.S. 105-163.2 an average of five hundred dollars (\$500.00) or more per month during the preceding calendar year (or during so much of such year as he paid wages) and every employer who begins paying wages during a calendar year and whose liability to deduct and withhold under G.S. 105-163.2 can reasonably be expected to average five hundred dollars (\$500.00) or more per month in that calendar year, shall make returns and pay over to the Secretary each month the amounts required to be withheld under G.S. 105-163.2. Returns and payments to the Secretary by such employers shall be made on or before the fifteenth day of the month following the month for which such amounts were required to be withheld from the wages of employees; except that the returns and payments for the month of December shall be made on or before the 31st day of the following month.~~

~~When an employer has become subject to the requirements of this subsection, he shall continue to make returns and payments to the Secretary on that basis. However, an employer required under the provisions of this subsection to file monthly returns who, in a later calendar year, is required to deduct and withhold under G.S. 105-163.2 an average of less than five hundred dollars (\$500.00) per month may make application to the Secretary for authority to use the quarterly basis for filing and making payments. Such authority, when granted, shall be in writing, shall commence on a date set by the Secretary, and shall continue until the Secretary, in the exercise of his discretion, shall revoke it in writing, effective on a date set by him.~~

~~(d) If the Secretary, in any case, has reason to believe that the collection of moneys, required by this Article to be withheld by the employer, is in jeopardy, he may require the employer to make such return and pay to the Secretary such amounts required to be withheld at any time said Secretary may designate therefor subsequent to the time when such amounts should have been deducted from wages and withheld. Three Banking Days. -- An employer who withholds an average of at least two thousand dollars (\$2,000) of State income taxes from wages each month shall file a return by the date set under the Code for filing a return for federal income taxes withheld from the~~

same wages and shall pay the withheld State taxes by the date set under the Code for depositing or paying federal income taxes withheld from the same wages. The date set by the Code for depositing or paying federal income taxes withheld from wages shall be determined without regard to § 6302(g) of the Code.

An extension of time granted to file a return for federal income taxes withheld from wages is an automatic extension of time for filing a return for State income taxes withheld from the same wages, and an extension of time granted to pay federal income taxes withheld from wages is an automatic extension of time for paying State income taxes withheld from the same wages. An employer who pays withheld State income taxes under this subsection is not subject to interest on or penalties for an underpayment of an amount due if the employer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the employer files.

(e) Every employer who fails to withhold or pay to the Secretary any sums required by this Article to be withheld and paid shall be personally and individually liable therefor to the Secretary; and any sum or sums withheld in accordance with the provisions of G.S. 105-163.2 shall be deemed to be held in trust for the Secretary. Category. -- The Secretary shall monitor the amount of taxes withheld by an employer or estimate the amount of taxes to be withheld by a new employer and shall direct each employer to pay withheld taxes in accordance with the appropriate schedule. An employer shall file a return and pay withheld taxes in accordance with the Secretary's direction until notified in writing to file and pay under a different schedule.

(f) Any person required to collect, truthfully account for, and pay over any amounts required to be deducted and withheld under G.S. 105-163.2, who fails to collect and pay over such amount shall, in addition to other penalties provided by law, be personally liable to a penalty equal to the total amount not collected or not accounted for and paid over. No penalty shall be imposed under G.S. 105-163.17 for any offense to which this subsection is applicable."

Sec. 11. G.S. 105-163.7(b) reads as rewritten:

"(b) The written statement above referred to shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary may by regulations prescribe. Secretary may require an employer to include information not listed in subsection (a) on the employer's written statement to an employee and to file the statement at a time not required by subsection (a). Every employer shall file an annual report with the Secretary that contains the information given on each of the employer's written statements to an employee and other information required by the Secretary. The

~~annual report is due on the same date the employer's federal information return of federal income taxes withheld from wages is due under the Code. returns or reports setting forth such information as the Secretary may require, and the Secretary may require the filing of such additional copies of all written statements described above as he may deem necessary. On and after January 1, 1961, the annual returns or reports required to be made to the Secretary under the provisions of this section shall be in lieu of such returns required under G.S. 105-154 as would furnish identical information. The report required by this subsection is in lieu of the report required by G.S. 105-154."~~

Sec. 12. G.S. 105-163.8 reads as rewritten:

~~" § 105-163.8. Liability of employer, employer and others.~~

~~An employer shall be liable for the payment to the Secretary of the amounts required to be deducted and withheld under G.S. 105-163.2, and an employer who has withheld and paid such amounts to the Secretary shall not otherwise be liable to any person for the amounts of any such payments. Upon failure of an employer to pay over any amounts withheld or required to be withheld by said employer under this Article, the Secretary may make assessments, issue warrants for the collection of such amounts, issue certificates of tax liability, collect by attachment or garnishment proceedings, or bring actions for the collection of such amounts and for penalties due under the provisions of G.S. 105-241.1, G.S. 105-242 and G.S. 105-243.~~

~~(a) Employer. An employer who withholds the proper amount of income taxes under G.S. 105-163.2 and pays the withheld amount to the Secretary is not liable to any person for the amount paid. An employer who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount not withheld or not paid. An employer who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to a penalty equal to twenty-five percent (25%) of the amount of taxes not withheld or not timely paid to the Secretary.~~

~~(b) Others. A person who has a duty to deduct, account for, or pay taxes required to be withheld under G.S. 105-163.2 and who fails to do so is liable for the amount not deducted, not accounted for, or not paid."~~

Sec. 13. G.S. 105-163.9 reads as rewritten:

~~" § 105-163.9. Refund to employer; application of overpayment to employer.~~

~~(a) Where there has been an overpayment to the Secretary by the employer or withholding agent under the provisions of this Article, refund shall be made to the employer or withholding agent, as the~~

~~case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent from the employee's wages, and such refund shall be paid together with interest thereon at the rate established in G.S. 105-241.1(i) for assessments; provided, that interest on any such refund shall be computed from a date 90 days after the date the overpayment was originally made by the employer or withholding agent. An employer who pays the Secretary more under this Article than the Article requires the employer to pay may obtain a refund of the overpayment by filing an application for a refund with the Secretary. No refund is allowed, however, if the employer withheld the amount of the overpayment from the wages of the employer's employees. An employer must file an application for a refund within the time period set in G.S. 105-266. Interest accrues on a refund as provided in G.S. 105-266.~~

~~(b) Unless written application for refund is received by the Secretary from the employer within two years from the date the overpayment was made, no refund shall be allowed."~~

Sec. 14. G.S. 105-163.17 reads as rewritten:

~~" § 105-163.17. Enforcement. Administration.~~

~~Except as otherwise provided in this Article, all provisions of Articles 4 and 9 of this Chapter relating to assessments, interest on delinquent payments, liens and collections with respect to taxes shall apply to all taxes and to the withholding of proper amounts from employees' wages for which an employer is responsible pursuant to this Article, and the procedure with respect thereto shall be the same as provided in said Articles 4 and 9 with respect to assessment and collection of taxes.~~

~~Any employer required under the provisions of this Article to deduct and withhold from wages and make returns and payment of amounts withheld to the Secretary, who fails to withhold such amounts, or to make such returns, or who fails to remit amounts collected to the Secretary, or otherwise fails to remit to the Secretary as required by this Article, shall be subject to a penalty equal to twenty-five percent (25%) of the amount that should have been properly withheld and paid over to the Secretary for each such failure. Such penalty shall be assessed and collected by the Secretary in the same manner as is provided with respect to penalties on delinquent income tax payments under the provisions of Articles 4 and 9 of this Chapter.~~

~~The withholding of the proper amounts of an employee's wages pursuant to this Article and the payment of proper amounts to the Secretary as herein required, whether withheld in fact or not, shall be subject to all the provisions of Articles 4 and 9 of this Chapter relating to payment of income taxes, not inconsistent with this Article, apply to~~

the amount of State income taxes this Article requires an employer to withhold and pay to the Secretary."

Sec. 15. G.S. 105-259 reads as rewritten:

" § 105-259. Secrecy required of officials; penalty for violation.

With respect to any one of the following persons: (i) the Secretary of Revenue and all other officers or employees, and former officers and employees, of the Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former local tax officials; (iii) members and former members of the Property Tax Commission; (iv) any other person authorized in this section to receive information concerning any item contained in any report or return, or authorized to inspect any report or return; and (v) the Commissioner of Insurance and all other officers or employees and former officers and employees of the Department of Insurance with respect to State and federal income tax returns filed with the Commissioner of Insurance by domestic insurance companies; and except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any of these persons to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax or other taxes or any part thereof might be determined, deduced or estimated, whether it is set forth or disclosed in or by means of any report or return required to be filed or furnished under this Subchapter, or in or by means of any audit, assessment, application, correspondence, schedule or other document relating to the taxpayer, notwithstanding the provisions of Chapter 132 of the General Statutes or of any other law or laws relating to public records. It shall likewise be unlawful to reveal whether or not any taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or corporation not otherwise entitled to information relating to the amount of income, income tax or other taxes of a taxpayer, any list of names, addresses, social security numbers or other personal information concerning the taxpayer, whether or not the list discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that when an election is made by a husband and wife under G.S. 105-152.1 to file a joint return, any information given to one spouse concerning the income or income tax of the other spouse reported or reportable on the joint return shall not be a violation of the provisions of this section.

Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of these reports or returns by the Governor, Attorney General, or their duly authorized representative; or the inspection by a legal representative of

the State of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this Subchapter; nor shall the provisions of this section prohibit the Department of Revenue furnishing information to other governmental agencies of persons and firms properly licensed under Schedule B, G.S. 105-33 to 105-113. The Department of Revenue may exchange information with the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to 105-113, with respect to parties liable for these taxes and as to parties who have paid these license taxes.

When any record of the Department of Revenue has been photographed, photocopied, or microphotocopied pursuant to the authority contained in G.S. 8-45.3, the original of that record may thereafter be destroyed at any time upon the order of the Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, G.S. 132-2, or any other law relating to the preservation of public records. Any record that has not been so photographed, photocopied, or microphotocopied shall be preserved for three years, and thereafter until the Secretary of Revenue orders it destroyed.

Any person, officer, agent, clerk, employee, or local tax official or any former officer, employee, or local tax official who violates the provisions of this section shall be guilty of a misdemeanor and fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000) and/or imprisoned, in the discretion of the court; and if the person committing the violation is a public officer or employee, that person shall be dismissed from such office or employment, and may not hold any public office or employment in this State for a period of five years thereafter.

Notwithstanding the provisions of this section, the Secretary of Revenue may permit the Commissioner of Internal Revenue of the United States, or the revenue officer of any other state imposing any of the taxes imposed in this Subchapter, or the duly authorized representative of either, to inspect the report or return of any taxpayer; or may furnish that person an abstract of the report or return of any taxpayer; or supply that person with information concerning any item contained in any report or return, or disclosed by the report of any investigation of any report or return of any taxpayer. The permission, however, may be granted or the information furnished to the officer or agent only if the statutes of the United States or of the other state grant substantially similar privilege to the Secretary of Revenue of this State or the Secretary's duly authorized representative. Notwithstanding any other provision of law, the Secretary may also furnish names, addresses, and account and identification numbers of (i) taxpayers who

may be entitled to property held in the Escheat Fund to the Department of State Treasurer when that Department requests the information for the purpose of administering Chapter 116B of the General Statutes, and (ii) taxpayers to the Employment Security Commission when that Commission requests the information for the purpose of administering Article 2 of Chapter 96 of the General Statutes. Neither this section nor any other law prevents the exchange of information between the Department of Revenue and the Department of Transportation's Division of Motor Vehicles when the information is needed by either to administer the laws with which they are charged. Notwithstanding any other provision of law, State officers and employees who perform computerized data processing functions pursuant to G.S. 143-341(9) for the Department of Revenue are authorized to receive and process for the Department of Revenue information in reports and returns and are subject to the criminal provisions of this section.

Notwithstanding the provisions of this section, the Secretary of Revenue may contract with any person, firm or corporation to receive and address, sort, bag, or deliver to the United States Postal Service any bulk mailing originated by the Department of Revenue, and may deliver the mail to the contractor pursuant to the contract. To ensure performance of the contract, the contractor shall furnish a bond in a form and amount acceptable to the Secretary.

Notwithstanding the provisions of this section, the Secretary of Revenue may contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6."

Sec. 16. The revenue generated by Sections 1 through 15 of this act is nonrecurring revenue and shall therefore be used to fund only nonrecurring expenses.

Sec. 17. Sections 10 and 11 of Chapter 814 of the 1989 Session Laws are repealed.

Sec. 18. Sections 1 through 4 of this act shall become effective October 1, 1990, and shall apply to gross receipts earned from services and commodities provided on or after that date and to sales of electricity, piped natural gas, or telecommunications service made on or after that date. Sections 5 through 15 of this act shall become effective January 1, 1991. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

AN ACT TO IMPROVE THE PROCEDURE FOR COLLECTING
DEBTS OWED THE STATE BY SETTING OFF THE DEBTS
AGAINST TAX REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105A-3 reads as rewritten:

" § 105A-3. *Remedy additional; mandatory usage; obtaining identifying information.*

(a) The collection remedy under this Article is in addition to and not in substitution for any other remedy available by law.

(b) All claimant agencies shall submit, for collection under the procedure established by this Article, all debts which they are owed, ~~except in cases where said agencies are~~ debts that they are advised by the Attorney General not to submit a claim because the validity of the debt is legitimately in dispute, because an alternative means of collection is pending and believed to be adequate, or because such a collection attempt would result in a loss of federal funds.

(c) All claimant agencies shall whenever possible obtain the full name, social security number, address, and any other identifying information required by rules promulgated by the Department pursuant to ~~the authority of~~ G.S. 105A-16 from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under ~~the terms of~~ this Article."

Sec. 2. G.S. 105A-6 reads as rewritten:

" § 105A-6. *Procedure for setoff.*

(a) A claimant agency seeking to attempt collection of a debt through setoff shall notify ~~in writing~~ the Department in writing and supply (i) information necessary to identify the debtor whose refund is sought to be set off, off and (ii) the date, if any, that the debt is expected to expire. Notification to the Department and the furnishing of identifying information must occur on or before a date specified by the Department in the first year preceding the calendar year during which the refund would be paid. The notice is effective to initiate setoff against refunds that would be made in calendar years following the year in which the notice was first made until the date specified in the notice that the debt is expected to expire. The agency shall notify the Department in writing when a debt has been paid or is no longer owed the agency. ~~Additionally, subject to the notification deadline specified above, the notification shall be effective only to initiate setoff for claims against refunds that would be made in the calendar year~~

~~subsequent to the year in which notification is made to the Department.~~

(b) The Department, upon receipt of notification, shall determine each year whether the debtor to the claimant agency is entitled to a refund of at least fifty dollars (\$50.00) from the Department. Upon determination by the Department that a debtor specified by a claimant agency qualifies for such a refund, the Department shall notify in writing the claimant agency that a refund is pending, specify its sum, and indicate the debtor's address as listed on the tax return.

(c) Unless stayed by court order, the Department shall, upon certification as ~~hereinafter~~ provided in this Article, set off the certified debt against the refund to which the debtor would otherwise be entitled."

Sec. 3. G.S. 105A-13 reads as rewritten:

" § 105A-13. *Disposition of proceeds collected; collection assistance fees.*

(a) Upon effecting final setoffs, the Department shall periodically write checks to the respective claimant agencies for the net proceeds collected on their behalf.

~~(b) From the gross proceeds collected by the Department of Revenue through setoff, the Department shall retain fifteen percent (15%), which amount shall be charged to the respective claimant agency as a collection assistance fee. The Department shall devote the funds so retained to the following uses and purposes:~~

- ~~(1) For the purpose of effectuating the provisions of the income tax refund Setoff Debt Collection Act, the sum of one hundred fifteen thousand dollars (\$115,000) in the fiscal year 1979-80, and the sum of one hundred sixty thousand dollars (\$160,000) in the fiscal year 1980-81; and~~
- ~~(2) For the purpose of preparing, printing, publishing and mailing to taxpayers revised income withholding tax tables required to be revised as a result of the Revenue Act of 1979, the sum of one hundred one thousand dollars (\$101,000) in the fiscal year 1979-80, and the sum of one hundred eight thousand dollars (\$108,000) in the fiscal year 1980-81. Any balance remaining unexpended from the total collection assistance fees at the close of each fiscal year shall be deposited into the State Treasury for credit to the General Fund. In order to fund the cost of the setoff program and of printing, publishing and mailing said tax tables, before receipt of any collection assistance fees, the Department of Revenue is authorized to borrow from the Contingency and Emergency Fund up to two hundred sixteen thousand dollars (\$216,000) in fiscal year 1979-80, and up to two hundred sixty-eight thousand dollars (\$268,000) in fiscal year 1980-~~

~~81, to be repaid from collection assistance fees as they are received.~~

~~For years after fiscal year 1980-81, the~~ Each year the Department shall calculate its actual cost of collection as a percentage of the immediately preceding year's collections under the Setoff Debt Collection Act, and that percentage shall be its collection assistance fee for the then-current fiscal year. Act and shall retain that percentage from the gross proceeds collected by the Department through setoff for the current fiscal year."

Sec. 4. Not later than October 1, 1991, the Administrative Office of the Courts shall submit to the Department of Revenue pursuant to Chapter 105A of the General Statutes, a list of all debts as defined in G.S. 105A-2(3) which are owed to the State by any debtor on a judgment docketed on or after October 1, 1981, under G.S. 7A-455(b) or G.S. 7A-450.3 for the value of services rendered and expenses incurred in providing representation to an indigent, juvenile or dependent adult, and for which the information required by G.S. 105A-3(c) and G.S. 105A-6(a), is available in the records of the clerk of superior court.

Sec. 5. G.S. 7A-455 is amended by adding a new subsection to read:

"(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian *ad litem*, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian *ad litem*, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under G.S. 450.3 shall include the social security number, if any, of the judgment debtor."

Sec. 6. G.S. 7A-455(c) reads as rewritten:

"(c) If the indigent person is not finally convicted, the foregoing provisions with respect to partial payments and liens shall not be applicable. No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 c/

seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is terminated or revoked if the indigent person is so ordered."

Sec. 7. In order to pay for the computer programming, data entry, and related expenses needed to implement the provisions of this act, the Department of Revenue shall draw from individual income tax net collections received under Division II of Article 4 of Chapter 105 of the General Statutes an amount not to exceed eighty-one thousand six hundred dollars (\$81,600) for the 1990-91 fiscal year.

Sec. 8. This act shall become effective July 1, 1990. Sections 1 through 3 of this act are effective for taxable years beginning on or after January 1, 1991, and apply to debts submitted pursuant to G.S. 105A-6 on or after January 1, 1991. Section 5 shall apply to all applications submitted and orders entered on or after October 1, 1990, and Section 6 shall apply to all judgments entered on or after that date.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

H.B. 2101

CHAPTER 947

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE TOWN OF TRENT WOODS, AND PROVIDING THAT THE GENERAL LAW ON COMPENSATION OF MUNICIPAL OFFICERS SHALL APPLY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 718, Session Laws of 1959, being the Charter of the Town of Trent Woods, is rewritten to read:

"Sec. 2. The boundaries and corporate limits of the Town of Trent Woods are as follows:

Beginning at that point where the easternmost right-of-way line of Highland Avenue intersects with the southernmost right-of-way line of Trent Road (N.C.S.R. 1278); thence from said point of beginning so located, along and with the easternmost right-of-way line of Highland Avenue in a southeasterly direction to the northwestern corner of Lot No. 1, Block D of Highland Park Subdivision as recorded in Map Book 7, at Page 23, in the office of the Register of Deeds of Craven County; thence along and with the northernmost lines of said block in a northeasterly direction to the northernmost corner of Lot No. 8 of said subdivision; thence in a straight line in a northerly direction to

the westernmost corner of Lot No. 21, Block E of said subdivision; thence along and with the northernmost lines of said block in a northerly and an easterly direction to the easternmost corner of said block; thence along and with the easternmost line of said block in a southwesterly direction to a point in the easternmost line of said block, being the northwestern corner of Lot No. 31, Fox Hollow - Section One as recorded in Map Book 11, at Page 55, in the office of the Register of Deeds of Craven County; thence along and with the northeasternmost line of said subdivision in a southeasterly direction to the northeastern corner of Lot No. 32 of said subdivision; thence along and with the southeasternmost line of said subdivision in a southwesterly direction to the southeastern corner of Lot No. 37 of said subdivision, being a point in the northernmost line of Fox Hollow - Section Three as recorded in Plat Cabinet A, at Slide 82-B, in the office of the Register of Deeds of Craven County; thence along and with the northernmost lines of said subdivision and the property designated 'Reserved' on the plat thereof to the westernmost right-of-way line of Pembroke - Country Club Road (N.C.S.R. 1200); thence in a straight line in a southeasterly direction crossing Pembroke - Country Club Road at a right angle to the right-of-way line of Pembroke - Country Club Road to a point in the easternmost right-of-way line of Pembroke - Country Club Road; thence along and with the easternmost right-of-way line of Pembroke - Country Club Road in a southwesterly direction to that point where the easternmost right-of-way line of Pembroke - Country Club Road intersects with the northeasternmost right-of-way line of Trent Shores Drive (N.C.S.R. 1206); thence along and with the northeasternmost right-of-way line of Trent Shores Drive in a southeasterly direction to the westernmost corner on Trent Shores Drive of Lot No. 9 of Trent Shores - Section E as recorded in Plat Cabinet B, at Slide 69, in the office of the Register of Deeds of Craven County; thence along and with the western line of said lot in a northerly direction to the northwestern corner of said lot; thence along and with the northern lines of said lot and Lot No. 10 of said subdivision in an easterly direction to the northeastern corner of said Lot No. 10; thence along and with the eastern line of said lot in a southerly direction to the easternmost corner on Trent Shores Drive of said lot; thence along and with the northeasternmost right-of-way line of Trent Shores Drive in a southeasterly direction to the northernmost corner on Trent Shores Drive of Lot No. 22 of Trent Shores Subdivision - Lots 21 and 22 - Section 'A' Addition as recorded in Plat Cabinet D, at Slide 501, in the office of the Register of Deeds of Craven County; thence along and with the northwesternmost line of said lot in a northeasterly direction to the northernmost corner of said lot; thence along and with the

northeasternmost line of said lot in a southeasterly direction to the northernmost shoreline of Trent River; thence in a straight line continuing in the same direction to the centerline of Trent River; thence along with the centerline of Trent River in a westerly direction to that point where the centerline of Trent River intersects with the centerline of Haywood Creek; thence along and with the centerline of Haywood Creek in a northerly direction to the southernmost corner of Lot No. 52 of the Plan of Haywood Farms - Section 2 as recorded in Plat Cabinet C, at Slide 347, in the office of the Register of Deeds of Craven County; thence along and with the southernmost line of said lot and Lot No. 53 of said subdivision in a northeasterly direction to the southeastern corner of said Lot No. 53, being the southwestern corner of Lot No. 6 of the Plan of Haywood Farms - Section 1 as recorded in Plat Cabinet B, at Slide 339, in the office of the Register of Deeds of Craven County; thence along and with the southernmost line of said subdivision to the southeastern corner of Lot No. 15 of said subdivision; thence in a straight line in a southeasterly direction to the point in the southernmost right-of-way line of River Road (N.C.S.R. 1214) which is the center of the curve of the southernmost right-of-way line of River Road as shown on the aforesaid map; thence along and with the southernmost right-of-way line of River Road in a northeasterly direction to the centerline of Morris Branch; thence along and with the centerline of Morris Branch in a southeasterly and an easterly direction to that point where the centerline of Morris Branch intersects with the centerline of Jimies Creek; thence along and with the centerline of Jimies Creek in a northerly direction to that point where the centerline of Jimies Creek intersects with the centerline of Spring Branch; thence along and with the centerline of Spring Branch in a northeasterly direction to the southwestern corner of Lot No. 9 of the Patterson Farm as recorded in Map Book 2, at Page 75, in the office of the Register of Deeds of Craven County; thence along and with the southernmost line of said lot in an easterly direction to the westernmost right-of-way line of Pembroke - Chelsea Road (N.C.S.R. 1200); thence along and with the westernmost line of Pembroke - Chelsea Road in a southwesterly direction to that point where the westernmost right-of-way line of Pembroke - Chelsea Road intersects with a line extended at a right angle to the right-of-way line of Pembroke - Chelsea Road from the southwestern corner of New Bern Memorial Cemetery; thence in a straight line in an easterly direction crossing Pembroke - Chelsea Road at a right angle to the right-of-way line of Pembroke - Chelsea Road to the southwestern corner of New Bern Memorial Cemetery; thence along and with the southernmost line of New Bern Memorial Cemetery in an easterly direction to the westernmost line of the Plan of Bellefern - Section Six

- Phase 2 as recorded in Plat Cabinet D, at Slide 559, in the office of the Register of Deeds of Craven County; thence along and with the westernmost line of said subdivision in a northeasterly direction to the northwestern corner of Lot No. 11 of said subdivision; thence along and with the northernmost line of said lot in an easterly direction to the southwestern corner of Lot No. 12 of the Plan of Bellefern - Section 6 - Phase 1 as recorded in Plat Cabinet D, at Slide 531, in the office of the Register of Deeds of Craven County; thence along and with the westernmost lines of said lot and Lot No. 13 of said subdivision to the southeastern corner of the J. R. Harris and wife, Ruby H. Harris lot as recorded in Book 515, at Page 505, in the office of the Register of Deeds of Craven County; thence along and with the southernmost line of said lot in a westerly direction to the southwestern corner of said lot; thence along and with the westernmost line of said lot in a northerly direction to the southernmost right-of-way line of Trent Road; thence along and with the southernmost right-of-way line of Trent Road in an easterly direction to the point of beginning."

Sec. 2. Section 3 of Chapter 718, Session Laws of 1959, being the Charter of the Town of Trent Woods, is amended by deleting the comma and the succeeding material up to the period at the end of the section.

Sec. 3. This act shall become effective July 31, 1990, and property taxes for 1990 shall be prorated in accordance with G.S. 160A-58.10.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

H.B. 2267

CHAPTER 948

AN ACT TO EXPAND THE ELIGIBILITY FOR MEMBERSHIP IN
THE SUPPLEMENTAL RETIREMENT INCOME PLAN TO
EMPLOYEES OF CERTAIN LOCAL GOVERNMENTS AND
MAKE TECHNICAL CORRECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-92(a) reads as rewritten:

"(a) The membership eligibility of the Supplemental Retirement Income Plan shall consist of any of the following who voluntarily elect to enroll:

- (1) Members of the Teachers' and State Employees' Retirement System; and

- (2) ~~Members of the Uniform Judicial, Solicitorial and Clerks of Superior Court Retirement Systems;~~ Consolidated Judicial Retirement System; and
- (3) Members of the Legislative Retirement System; and
- (4) Members of the Local Governmental Employees' Retirement System; and
- (5) ~~Members of the Law Enforcement Officers' Retirement System;~~ Law enforcement officers as defined under G.S. 143-166.30 and G.S. 143-166.50; and
- (6) Participants in the Optional Retirement Program provided for under ~~G.S. 135-5.1,~~ G.S. 135-5.1; and
- (7) Members of retirement and pension plans sponsored by political subdivisions of the State so long as such plans are qualified under Section 401(a) of the Internal Revenue Code of 1986 as amended from time to time."

Sec. 2. G.S. 135-91 reads as rewritten:

" § 135-91. *Administration.*

(a) The provisions of this Article shall be administered by the Department of State Treasurer and a Board of Trustees consisting of the Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Governmental Employees' Retirement System. The Department of State Treasurer and the Board of Trustees shall create a Supplemental Retirement Income Plan as of January 1, 1985, to be administered under the provisions of this Article.

(b) The Supplemental Retirement Income Plan shall have the power and privileges of a corporation and shall be known as the 'Supplemental Retirement Income Plan of North Carolina' and by this name all of its business shall be transacted.

(c) The Department of State Treasurer and the Board of Trustees shall have full power and authority to adopt rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of this Article. The Department of State Treasurer and Board of Trustees may appoint those agents, contractors, employees and committees as they deem advisable to carry out the terms and conditions of the Plan.

(d) The Department of State Treasurer and the Board of Trustees shall be charged with a fiduciary responsibility for managing all aspects of the Plan, including the receipt, maintenance, investment, and disposition of all Plan assets.

(e) The administrative costs of the Plan may be charged to members or deducted from members' accounts in accordance with nondiscriminatory procedures established by the Department of State Treasurer and Board of Trustees.

(f) Each institution of The University of North Carolina shall report the data and other information to the Supplemental Retirement Income Plan pertaining to participants in the Optional Retirement Program as shall be required by the Department of State Treasurer and the Board of Trustees.

(g) Each political subdivision of the State that sponsors a retirement or pension plan with members who are members of the Supplemental Retirement Income Plan shall report the data and other information to the Plan pertaining to members of the retirement or pension plan as shall be required by the Department of State Treasurer and the Board of Trustees."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

H.B. 2269

CHAPTER 949

AN ACT TO ALLOW A SUPERIOR COURT JUDGE TO ENTER JUDGMENT IN A CAVEAT PROCEEDING IN ACCORDANCE WITH A SETTLEMENT AGREEMENT ENTERED INTO BY THE PARTIES, EITHER SUSTAINING OR SETTING ASIDE THE WILL.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 31 of the General Statutes is amended by adding a new section to read:

" § 31-37.1. Parties may enter into a settlement agreement.

Prior to an entry of judgment by the superior court in a caveat proceeding, the parties may enter into a settlement agreement, whereupon judgment may be entered by the court, without a verdict by a jury, in accordance with the terms of the settlement agreement, either sustaining or setting aside the contested will."

Sec. 2. This act shall become effective October 1, 1990, and shall apply to all caveats to wills whether filed on, before or after that date.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

H.B. 2281

CHAPTER 950

AN ACT AUTHORIZING THE COUNTY OF DURHAM TO REQUIRE DEVELOPMENT PLANS DURING THE PROPERTY REZONING PROCESS.

The General Assembly of North Carolina enacts:

Section 1. (a) Development Plans and Site Plans. In exercising the zoning power granted to counties by G.S. 153A-340, G.S. 153A-341, and G.S. 153A-342, the Durham County Board of Commissioners may require a development plan showing the proposed development of property be submitted along with any request for the rezoning of that property. The Board may consider the development plan in its deliberations on the rezoning action. The Board may require that any site plan submitted after the rezoning action conform with the previously approved development plans for the same property. The Board may adopt procedures and guidelines for the preparation and presentation of these development plans.

(b) The Durham County Board of Commissioners may require that a site plan be submitted and approved prior to the issuance of any building permit. The Board may specify the information to be included in a site plan and may require that the site plan be prepared by a professional engineer, architect, surveyor, or landscape architect licensed to practice in North Carolina. The Board may adopt procedures for the preparation and review of the site plans to insure that development of property shall conform to applicable zoning and building laws and regulations. The Board may require that site plans conform with previously approved development plans for the same property.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1990.

S.B. 155

CHAPTER 951

AN ACT TO REQUIRE CERTAIN MUNICIPALITIES WHICH VIOLATE THE CONDITIONS OF COURT ORDERS REGARDING THE DISCHARGE OF WATER FROM A WASTEWATER TREATMENT PLANT OPERATED BY SUCH MUNICIPALITIES TO PAY FULL AMOUNT OF THE PENALTIES SPECIFIED IN SUCH ORDERS, TO AMEND OTHER LAWS RELATING TO EFFLUENT OR EMISSION STANDARDS AND LIMITATIONS, AND TO REQUIRE THAT CERTAIN MUNICIPALITIES NOTIFY DOWNSTREAM UNITS OF LOCAL GOVERNMENT WHENEVER THEIR WASTEWATER TREATMENT PLANT EXCEEDS APPLICABLE EFFLUENT LIMITATIONS OR WHEN UNTREATED OR PARTIALLY TREATED WASTEWATER IS DIVERTED SO AS TO BYPASS THE WASTEWATER TREATMENT PLANT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.6(a) is amended by adding a new subdivision to read:

"(6) As used in this subdivision, 'municipality' refers to any unit of local government which operates a wastewater treatment plant. As used in this subdivision, 'unit of local government' has the same meaning as in G.S. 130A-290. The provisions of this subdivision shall apply whenever a municipality that operates a wastewater treatment plant with an influent bypass diversion structure and with a permitted discharge of 10 million gallons per day or more into any of the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission is subject to a court order which specifies (i) a schedule of activities with respect to the treatment of wastewater by the municipality; (ii) deadlines for the completion of scheduled activities; and (iii) stipulated penalties for failure to meet such deadlines. A municipality as specified herein that violates any provision of such order for which a penalty is stipulated shall pay the full amount of such penalty as provided in the order unless such penalty is modified, remitted, or reduced by the court."

Sec. 2. A new section is added to Part I of Article 21 of Chapter 143 of the General Statutes to read:

"§ 143-215.6A. Additional requirements applicable to certain municipal wastewater treatment facilities."

(a) As used in this section, 'municipal' and 'municipality' refer to any unit of local government which operates a wastewater treatment plant. As used in this section, 'unit of local government' has the same meaning as in G.S. 130A-290.

(b) A municipality that operates a wastewater treatment plant with an influent bypass diversion structure and with a permitted discharge of five million gallons per day or more into any of the surface waters of the State shall maintain a notification list of units of local government which have requested to be on such list. Any unit of local government with territorial jurisdiction over or adjacent to any part of the surface waters of the State located within 100 miles downstream from the point of discharge from a municipal wastewater treatment plant to which this section applies as measured along the path of the stream, and any unit of local government which withdraws water from such surface waters to supply water to the public, may request the municipality operating the wastewater treatment plant to include the names of appropriate officials of the unit of local government on the notification list required by this subsection. The

municipality operating such municipal wastewater treatment plant shall give notice of each instance when untreated or partially treated wastewater is diverted so as to bypass the wastewater treatment plant to each person on the notification list at least 24 hours before any such instance which is planned or anticipated and within 24 hours after any such instance which is unplanned or unanticipated."

Sec. 3. This act is effective upon ratification, and applies with respect to any court order in effect on the date this act becomes effective.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

S.B. 810

CHAPTER 952

AN ACT TO AMEND THE NORTH CAROLINA TECHNOLOGICAL DEVELOPMENT AUTHORITY'S ENABLING LEGISLATION REGARDING THE INCUBATOR FACILITIES PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-471.4 reads as rewritten:

" § 143B-471.4. *Incubator facilities program.*

(a) The Authority shall establish one or more incubator facilities within the State. An incubator facility is a building or buildings that provides space and support services for small businesses concerns which are beginning. 'Small business concern' has the same meaning as that contained in Chapter 14A of Title 15, United States Code, and regulations promulgated under it.

(b) The Authority shall select sites for incubator facilities. The Authority in selecting sites shall evaluate areas for potential sites using the following criteria but is not limited to them:

- (1) The unemployment rate.
- (2) The need for industrial and economic diversification and development.
- (3) The interest by the locality in the establishment of an incubator facility in the area as manifested by grants from public and private sources and cooperation agreements between local government, business, labor and educational institutions demonstrating the probability of the success of the incubator facility.

(c) The Authority may make ~~one-time~~ grants to establish incubator ~~facilities.~~ facilities, provided that the grant amount received by any single incubator facility may not exceed two hundred thousand dollars (\$200,000). ~~A grant may not exceed two hundred thousand dollars~~

~~(\$200,000).~~ Local government and interests must at least equal in cash or real estate value any grant made by the Authority; Provided, however, that contributions by State agencies may not be included in the matching grant.

(d) Only nonprofit corporations which are affiliated with local universities, colleges, community colleges or combinations thereof to advance the educational and research programs of these institutions shall be eligible to receive a grant from the Authority. Pursuant to rules adopted by the Authority, the corporation shall:

- (1) Manage and maintain the incubator facility,
- (2) Develop a mechanism to provide technical, management and entrepreneurial expertise to resident small business concerns and to small business concerns throughout the area, and
- (3) Abide by rules adopted by the Authority.

(e) The incubator facility and any improvements shall be owned by a county, city, political subdivision, nonprofit corporation, or charitable or educational trust, but may be leased to the grant recipient. However, in the event the grant recipient has a lease for a term of five years or longer, then this incubator facility may be owned by any firm or entity if (i) the person or entity that owns the incubator facility does not control the grant recipient, and (ii) the Authority determines that the lease arrangement will further the purpose of the State's incubator facilities program. Incubator facilities may be located in a part of a larger building, then the ownership and lease provisions of this section shall be satisfied if the funds granted to the grant recipient are used only for that portion of the building owned or leased as provided in this section. In the event the physical facility is not used as an incubator facility for a minimum of five years, a pro rata portion of the incubator grant shall be returned for each month the facility is not used as an incubator facility. Small business concern residents of the facility may be provided secretarial and other support facilities and utilities for which the corporation may charge them a part or all of the cost. No small business concern may remain in the facility for more than two years, provided that if the owner of the property determines that it is in the best interest of the economic vitality of the owner, lessor and lessee, or it is economically and physically beneficial to the owner, lessor and lessee, the lease may be extended for a period not to exceed one additional year. Notwithstanding any other provision of law, the State shall not be liable for any act or failure to act of any organization granted funds under this Part, or any small business concern benefiting from the incubator facilities program."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

S.B. 1013

CHAPTER 953

AN ACT TO ESTABLISH A SEPARATE AND UNIQUE LAW ENFORCEMENT OFFICER OATH OF OFFICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 11-11 reads as rewritten:

" § 11-11. *Oaths of sundry persons; forms.*

The oaths of office to be taken by the several persons hereafter named shall be in the words following the names of said persons respectively, after taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina:

Administrator

You swear (or affirm) that you believe A. B. died without leaving any last will and testament; that you will well and truly administer all and singular the goods and chattels, rights and credits of the said A. B., and a true and perfect inventory thereof return according to law; and that all other duties appertaining to the charge reposed in you, you will well and truly perform, according to law, and with your best skill and ability; so help you, God.

Attorney at Law

I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability; so help me, God.

Attorney General, State District Attorneys and County Attorneys

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of Attorney General (district attorney for the State or attorney for the State in the county of); I will, in the execution of my office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability; so help me, God.

Auditor

I, A. B., do solemnly swear (or affirm) that I will well and truly execute the trust reposed in me as auditor, without favor or partiality, according to law, to the best of my knowledge and ability; so help me, God.

Book Debt Oath

You swear (or affirm) that the matter in dispute is a book account; that you have no means to prove the delivery of such articles, as you propose to prove by your own oath, or any of them, but by yourself; and you further swear that the account rendered by you is just and true; and that you have given all just credits; so help you, God.

Book Debt Oath for Administrator

You, as executor or administrator of A. B., swear (or affirm) that you verily believe this account to be just and true, and that there are no witnesses, to your knowledge, capable of proving the delivery of the articles therein charged; and that you found the book or account so stated, and do not know of any other or further credit to be given than what is therein given; so help you, God.

Clerk of the Supreme Court

I, do solemnly swear that I will discharge the duties of the office of clerk of the Supreme Court without prejudice, affection, favor, or partiality, according to law and to the best of my skill and ability, so help me, God.

Clerk of the Superior Court

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, fee, gift or reward, in consideration of my election or appointment to the office of clerk of the superior court for the county of; nor have I sold, or offered to sell, nor will I sell or offer to sell, my interest in the said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in the State; and I do further swear that I will execute the office of clerk of the superior court for the county of without prejudice, favor, affection or partiality, to the best of my skill and ability; so help me, God.

Commissioners Allotting a Year's Provisions

You and each of you swear (or affirm) that you will lay off and allot to the petitioner a year's provisions for herself and family, according to law, and with your best skill and ability; so help you, God.

Commissioners Dividing and Allotting Real Estate

You and each of you swear (or affirm) that, in the partition of the real estate now about to be made by you, you will do equal and impartial justice among the several claimants, according to their several rights, and agreeably to law; so help you, God.

Commissioner of Wrecks

I, A. B., do solemnly swear (or affirm) that I will truly and faithfully discharge the duties of a commissioner of wrecks, for the district of, in the county of, according to law; so help me, God.

Cotton Weigher for Public

I,, public weigher for the city of (or as the case may be), do solemnly swear that I will justly, impartially and without any deduction, except as may be allowed by law, weigh all cotton that may be brought to me for that purpose, and tender a true account thereof to the parties concerned, if required so to do; so help me, God.

Entry-Taker

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of entry-taker for the county of according to law; so help me, God.

Executor

You swear (or affirm) that you believe this writing to be and contain the last will and testament of A. B., deceased; and that you will well and truly execute the same by first paying his debts and then his legacies, as far as the said estate shall extend or the law shall charge you; and that you will well and faithfully execute the office of an executor, agreeably to the trust and confidence reposed in you, and according to law; so help you, God.

Grand Jury--Foreman of

You, as foreman of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the State's counsel, your fellows' and your own you shall keep secret; you shall present no one for envy, hatred or malice; neither shall you leave anyone unrepresented for fear, favor or affection, reward or the hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

Grand Jurors

The same oath which your foreman hath taken on his part, you and each of you shall well and truly observe and keep on your part; so help you, God.

Grand Jury--Officer of

You swear (or affirm) that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement, and without disclosing the contents thereof; so help you, God.

Jury--Officer of

You swear (or affirm) that you will keep every person sworn on this jury in some private and convenient place when in your charge. You shall not suffer any person to speak to them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed in their verdict, but with leave of the court; so help you, God.

Oath for Petit Juror

You do solemnly swear (affirm) that you will truthfully and without prejudice or partiality try all issues in civil or criminal actions that come before you and give true verdicts according to the evidence, so help you, God.

Justice, Judge, or Magistrate of the
General Court of Justice

I, do solemnly swear (affirm) that I will administer justice without favoritism to anyone or to the State; that I will not knowingly take, directly or indirectly, any fee, gift, gratuity or reward whatsoever, for any matter or thing done by me or to be done by me by virtue of my office, except the salary and allowances by law provided; and that I will faithfully and impartially discharge all the duties of of the Division of the General Court of Justice to the best of my ability and understanding, and consistent with the Constitution and laws of the State; so help me, God.

Register of Deeds

I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of, in all things according to law; so help me, God.

Secretary of State

I, A. B., do swear (or affirm) that I will, in all respects, faithfully and honestly execute the office of Secretary of State of the State of North Carolina, during my continuance in office, according to law; so help me, God.

Sheriff

I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of county to the best of my knowledge and ability, agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed; so help me, God.

Law Enforcement Officer

I, A. B., do solemnly swear (or affirm) that I will be alert and vigilant to enforce the criminal laws of this State; that I will not be influenced in any matter on account of personal bias or prejudice; that I will faithfully and impartially execute the duties of my office as a law enforcement officer according to the best of my skill, abilities, and judgment; so help me, God.

Standard Keeper

I, A. B., do swear (or affirm) that I will not stamp, seal or give any certificate for any steelyards, weights or measures, but such as shall, as near as possible, agree with the standard in my keeping; and that I will, in all respects, truly and faithfully discharge and execute the power and trust by law reposed in me, to the best of my ability and capacity; so help me, God.

State Treasurer

I, A. B., do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of State Treasurer, in all things according to law, and account for the public taxes; and I will not, directly or indirectly, apply the public money to any other use than by law directed; so help me, God.

Stray Valuers

You swear (or affirm) that you will well and truly view and appraise the stray, now to be valued by you, without favor or partiality, according to your skill and ability; so help you, God.

Surveyor for a County

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of surveyor for the county of according to law; so help me, God.

Treasurer for a County

I, A. B., do solemnly swear (or affirm) that, according to the best of my skill and ability, I will execute impartially the office of treasurer

for the county of., in all things according to law; that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same, or any part thereof, to any other use than by law directed; so help me, God.

Witness to Depose before the Grand Jury

You swear (or affirm) that the evidence you shall give to the grand jury, upon this bill of indictment against A. B., shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Capital Trial

You swear (or affirm) that the evidence you shall give to the court and jury in this trial, between the State and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Criminal Action

You swear (or affirm) that the evidence you shall give to the court and jury in this action between the State and A. B. shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in Civil Cases

You swear (or affirm) that the evidence you shall give to the court and jury in this cause now on trial, wherein A. B. is plaintiff and C. D. defendant, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness to Prove a Will

You swear (or affirm) that you saw C. D. execute (or heard him acknowledge the execution of) this writing as his last will and testament; that you attested it in his presence and at his request; and that at the time of its execution (or at the time the execution was acknowledged) he was, in your opinion, of sound mind and disposing memory; so help you, God.

Witness before a Legislative Committee or Commission

You swear (or affirm) that the testimony you shall give to the committee (or commission) shall be the truth, the whole truth, and nothing but the truth; so help you, God.

General Oath

Any officer of the State or of any county or township, the term of whose oath is not given above, shall take an oath in the following form:

I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of according to the best of my skill and ability, according to law; so help me, God."

Sec. 2. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

S.B. 1378

CHAPTER 954

AN ACT TO ESTABLISH A MORATORIUM ON THE TRANSFER OF WATERS.

The General Assembly of North Carolina enacts:

Section 1. Except as provided in Section 2 of this act and notwithstanding the provisions of G.S. 153A-285, G.S. 153A-287, or any other provision of law, no entity whether public or private, or whether acting separately or jointly may divert any of the waters of this State, as defined in G.S. 143-212(6), from the basin of any named river to another nor institute any proceeding in the nature of eminent domain to acquire water, water rights, or lands having water rights attached thereto for a use that will result in waters of this State being diverted from the basin of one named river to another.

Sec. 2. The prohibition in Section 1 of this act does not affect:

- (1) The diversion of waters from the basin of one named river to another where the actual diversion of waters lawfully began before the effective date of this act.
- (2) The diversion of waters from the basin of one named river to another if the diversion is authorized under a certificate or permit issued before the effective date of this act by the Environmental Management Commission as provided by G.S. 153A-285 and G.S. 162A-7, provided the diversion does not exceed the level authorized by the certificate or permit as issued before the effective date.
- (3) The diversion of waters from the basin of one named river to another if the diversion was included in the plans for a federal reservoir project that received congressional approval before the effective date of this act but was not constructed before the effective date of this act.
- (4) The diversion of waters from the basin of one named river to another if the diversion was included in plans for a water

treatment facility and funds to construct the water treatment facility were approved in a bond referendum held prior to the effective date of this act.

- (5) The diversion of waters from the basin of one named river to another where the diversion is in response to a substantial risk of water supply failure caused by low lake levels or streamflows, or in response to a water contamination or equipment failure emergency, provided that such diversions are limited to a maximum period of 140 days.
- (6) The discharge of waters from the basin of one named river to another if the discharge is authorized under a permit issued before the effective date of this act by the Environmental Management Commission as provided by G.S. 143-215.1.
- (7) The diversion of waters from the basin of one named river to another by a county that is situated on a ridge between two river basins for which the feeder streams flow into free flowing rivers rather than a reservoir if the diversion is included in plans to construct a water treatment plant that is part of a joint project with a water and sewer authority located in another state and a permit for an interbasin transfer has been issued by the state in which the water and sewer authority is located.

Sec. 3. The prohibition in Section 1 of this act does not affect the diversion of waters from the basin of one named river, the mainstream of which downstream from the point of the diversion is not located entirely in North Carolina, to the basin of another named river where the actual diversion of waters began before the effective date of this act.

Sec. 4. This act may not be construed to reflect legislative approval or disapproval of any transfer exempted herein.

Sec. 5. For purposes of this act the term "named river" shall mean any body of water bearing the designation "river" on the latest edition of the appropriate U.S. Geological Survey 7.5 minute quadrangle map.

Sec. 6. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act.

Sec. 7. This act is effective upon ratification and shall expire 1 July 1991.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

S.B. 1383

CHAPTER 955

AN ACT ENABLING THE COUNTY OF MACON TO ESTABLISH AN AIRPORT AUTHORITY FOR THE OPERATION AND MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY OF MACON FOR THE CITIZENS OF MACON COUNTY AND VICINITY AND TO ALLOW THE RUTHERFORD AIRPORT AUTHORITY TO LEASE LAND TO THE STATE OF NORTH CAROLINA FOR A PERIOD NOT TO EXCEED THIRTY YEARS.

The General Assembly of North Carolina enacts:

Section 1. The Macon County Board of Commissioners may by ordinance create the "Macon County Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by future acts of the General Assembly.

Sec. 2. The Airport Authority shall consist of seven members who shall be resident voters of Macon County and who shall be appointed by the Macon County Board of Commissioners, and who shall meet at least once per month at the Macon County Airport. Initially, the term of office of the members of the Airport Authority shall be determined by the Macon County Board of Commissioners, not to exceed four years, and thereafter the members of the Authority shall be appointed to serve for a period of four years and any member may serve a total of two successive terms, after which said member may not be reappointed to the Authority except after a lapse of two years following the most recent term served by said member. Members of the Authority may be removed with or without cause by the Macon County Board of Commissioners. Each of the members and their successors so appointed shall take and subscribe before the Clerk to the Board of Commissioners for the County of Macon an oath of office and file the same with the County Commissioners of Macon County. The Macon County Board of Commissioners may consult with the Airport Authority in filling vacancies on the Airport Authority.

Sec. 3. The members shall, for the purpose of doing business, constitute a Board of Directors, which shall adopt suitable bylaws for its management. The members of the Board shall receive compensation or per diem by unanimous agreement of the Authority. Members shall be allowed and paid their actual traveling expenses incurred in transacting the business and at the instance of said Airport Authority.

Sec. 4. Said Airport Authority shall constitute a body, both corporate and politic, and may:

- (1) Purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate the Macon County Airport for the use of airplanes, and other aircraft, and all facilities incidental to the operation of such airport, within the limits of Macon County; and for any of such purposes, to purchase, acquire, own, hold, lease and/or operate real or personal property;
- (2) Purchase real or personal property;
- (3) Sue or be sued in the name of the Airport Authority, make contracts necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise, any existing lease, leasehold right or other interest in any existing airport located in Macon County;
- (4) Charge and collect reasonable and adequate fees, royalties, rents or other charges for the use of the property owned, leased or otherwise controlled or operated by said Airport Authority or for services rendered in the operation thereof;
- (5) Make all reasonable rules and regulations as it deems necessary for the proper maintenance, use, operation, and control of any airport or airport facilities owned, leased, or otherwise controlled by said Airport Authority; to provide penalties for the violation of such rules and regulations; provided said rules and regulations and penalties be not in conflict with the laws of the State of North Carolina and the rules and regulations of the Federal Aviation Administration;
- (6) Sell, lease, or otherwise dispose of, any property, real or personal, belonging to the Airport Authority, but no sale of real property shall be made without the approval of the Board of County Commissioners of Macon County and the Federal Aviation Administration;
- (7) Purchase such insurance as said Airport Authority shall deem necessary;
- (8) Deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds;
- (9) Operate, own, lease, control, regulate, or grant to others the right to operate on any airport premises, restaurants, snack bars, and vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media,

merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service stations, garage service facilities, motion pictures, personal service establishments and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation;

- (10) Possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina;
- (11) Issue revenue bonds pursuant to Article 5 of Chapter 159 of the General Statutes of North Carolina;
- (12) Have all the same power and authority granted to cities and counties pursuant to General Statutes Chapter 63, AERONAUTICS;
- (13) Have a corporate seal which may be altered at will.

Sec. 5. Any lands acquired, owned, controlled or occupied by said Airport Authority shall, and are hereby declared to be acquired, owned, controlled and occupied for a public purpose.

Sec. 6. Said Airport Authority shall make an annual report to the Macon County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. Said Airport Authority shall be regarded as the corporate instrumentality and agent for Macon County for the purpose of operating, maintaining and developing airport facilities in Macon County, but it shall not have the power to pledge the credit of Macon County, or any subdivision thereof, or to impose any obligation upon Macon County or any subdivision thereof, except and when such power is expressly granted by statute.

Sec. 7. All rights and powers given and granted to the counties or municipalities by the statutes of North Carolina, which may now be in effect or enacted in the future relating to the development, regulation and control of municipal airports and the regulation of aircraft are vested in the Airport Authority, and Macon County may delegate its powers under said acts to the Airport Authority and the Airport Authority shall have concurrent right with Macon County to control, regulate and provide for the development of aviation in Macon County.

Sec. 8. Said Airport Authority may employ such agents, engineers, attorneys and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of this act. Members of said Airport Authority shall not be

personally liable, in any manner, for their acts as members of the Airport Authority, except for misfeasance or malfeasance.

Sec. 9. If any one or more sections, clauses, sentences or parts of this act shall be adjudged invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Sec. 10. Notwithstanding Section 4 of Chapter 335 of the 1971 Session Laws, the Rutherford Airport Authority may lease land to the State of North Carolina for a period not to exceed 30 years.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

S.B. 1384

CHAPTER 956**AN ACT TO REDEFINE THE CORPORATE BOUNDARIES OF
THE TOWN OF STOKESDALE.**

The General Assembly of North Carolina enacts:

Section 1. Section 2.1 of the Charter of the Town of Stokesdale, being Chapter 488, Session Laws of 1989, is rewritten to read:

"Sec. 2.1. Until changed in accordance with law, the boundaries of the Town of Stokesdale are as follows:

BEGINNING at a point at the common junction of the Guilford-Forsyth County line and the Guilford-Rockingham County line; thence in a southerly direction along the Guilford-Forsyth County line some 10,830 feet more or less to a point on the centerline of Highway US 158 where it intersects the Guilford-Forsyth County line; thence in an easterly direction some 150 feet more or less along the centerline of said US 158 to a point in the western property line of one Duke Power Company; thence in a southerly direction some 230 feet more or less to a corner in said Duke Power line; thence in an easterly direction some 150 feet more or less along a property line of said Duke Power to a corner in said Duke Power line; thence in a southerly direction some 2180 feet more or less along the western property line of said Duke Power to a corner in said Duke Power's line; thence in an easterly direction some 70 feet more or less along the southern property line of said Duke Power to a junction point of said property line with the western property line of one James M.

Searcy; thence in a southerly direction some 1620 feet more or less along the western property line of said James M. Searcy to a corner of said James M. Searcy and one Lelia Martin Heirs properties; thence in an easterly direction some 1360 feet more or less along the southern property lines of said James M. Searcy and one Shelia K. Smith to a junction point of the western property line of one Pamela K. M. Tate in said Shelia K. Smith property line; thence in a southerly direction some 500 feet more or less along the western property lines of said Pamela K. Martin Tate and one Eugene Martin; thence in an easterly direction from the southwestern corner of said Eugene Martin's property some 200 feet more or less along said Eugene Martin's line to the center of SR 2032 (Happy Hill Road); thence in a southerly direction some 600 feet more or less along said SR 2032 to a point in the southern property line of one Daniel Martin; thence in an easterly direction some 100 feet more or less along the southern property line of said Daniel Martin; thence in a south-southeasterly direction some 300 feet more or less along the southwestern property line of one W. Roy Reid; thence in an easterly direction some 130 feet more or less along the southern property line of said W. Roy Reid to the southeast corner of said W. Roy Reid property; thence in a northerly and northeasterly direction some 1080 feet more or less along said W. Roy Reid's property line to a point in the southwestern property line of one John L. Franklin; thence in a southeasterly direction some 220 feet more or less along the southwestern property line of said John L. Franklin to a point in the property line of one Richard Williams; thence in a northern direction some 400 feet more or less along the property line of said John L. Franklin to a corner at the west end of the southern property line of said John L. Franklin; thence in an easterly direction some 940 feet more or less along the southern property line of said John L. Franklin to a point in the western property line of one Ina P. Furnas; thence in a southerly direction some 1160 feet more or less along the western property line of said Ina P. Furnas to the southwest corner of said Ina P. Furnas property; thence in an easterly direction some 190 feet more or less along the southern property line of said Ina P. Furnas to a point where the northwest most corner of one H. Broadus Pearman Heirs property meets the southern property line of said Ina P. Furnas; thence in a southerly direction some 2500 feet more or less meandering along the western property line of said H. Broadus Pearman Heirs property to a point in SR 2033 (Warner Road); thence in an easterly direction some 500 feet more or less along said SR 2033 to a point at the northeast corner of the property of one Minnie F. Pearman being a common corner in said H. Broadus Pearman Heirs property line; thence in a southerly direction some 960 feet

more or less along the western property line of said H. Broadus Pearman Heirs to the southwest most corner of said H. Broadus Pearman Heirs property; thence in an easterly direction some 3460 feet more or less along the southern property lines of said H. Broadus Pearman Heirs and one Larry D. Combs to the southeast corner of said Larry D. Combs property; thence in a northerly direction some 1550 feet more or less along the eastern property line of said Larry D. Combs to a point in SR 2033 (Warner Road) at SR 2034 (Anthony Road); thence in an easterly direction some 1260 feet more or less along said SR 2033 to a point at the junction of SR 2033 and SR 2028 (Haw River Road); thence in a northeasterly direction some 180 feet more or less along said SR 2028 to a point being the southeast most corner of one Edna Pegram; thence in a southeasterly direction some 1240 feet more or less along the southern property lines of one Pegram Properties, Ltd. to a point and corner in the western property line of said Pegram Properties, Ltd.; thence in a southerly direction some 3000 feet more or less along the western property line of said Pegram Properties, Ltd.; thence in an easterly direction some 1260 feet more or less along the southern property line of said Pegram Properties, Ltd. to a corner in said Pegram Properties, Ltd. line; thence in an east northeasterly direction some 1600 feet more or less along the east southeastern property line of said Pegram Properties, Ltd. to a point in said Pegram Properties, Ltd. property line, the same point being some 460 feet more or less east-northeast of the northwest most corner of one Alan D. Wiener's property; thence in a south-southeasterly direction some 1500 feet more or less on a line across the properties of said Alan D. Wiener and one Felix A. Euforgia to a point on the north side of SR 2029 (West Harrell Road) this said point being some 500 feet more or less west of the junction of SR 2029 (West) and Highway NC 68; thence in an easterly direction some 500 feet more or less along the north side of said SR 2029 to a point being the southwest corner of one Jimmy and Larry Maddox property; thence in a northeasterly direction some 1000 feet more or less along the southeastern property line of said Jimmy and Larry Maddox to a point being the junction of the common property of said Maddox property and one Velner B. Carpenter property and said southeastern property line of said Maddox property; thence in an east-northeasterly direction some 1900 feet more or less along the south eastern property line of said Velner B. Carpenter to a junction point the same being the southwest most common corner between said Velner B. Carpenter and one John L. Haithcock properties; thence in a southerly direction some 1360 feet more or less along the western property line of said John L. Haithcock and one L. D. Graham to the southwest corner of said L. D. Graham property; thence in an easterly direction some 580

feet more or less along the property line of said L. D. Graham to a corner; thence in a southerly direction some 180 feet more or less along the property line of said L. D. Graham to a corner; thence in an east northeasterly direction some 840 feet more or less along the southern property line of said L. D. Graham to a corner; thence in a north northwesterly direction some 270 feet more or less along the property line of said L. D. Graham to a corner; thence in an east-northeasterly direction some 225 feet more or less along the property line of said L. D. Graham to a corner; thence in a northerly direction some 1640 feet more or less along said L. D. Graham's property line to the stream of Haw River; thence in an east-northeasterly direction some 13,020 feet more or less along the stream bed of said Haw River to a point in the property line of one Cebron Preston the same being the most northwest corner of the property of one Frances B. Angel; thence in an easterly direction some 480 feet more or less along the common property line between said Cebron Preston and said Frances B. Angel; thence in an easterly direction some 320 feet more or less along the southern property line of one Katherine F. Pegram to a corner; thence in a southerly direction some 240 feet more or less along the property line of said Katherine F. Pegram to a corner; thence in an east-northeasterly direction some 2015 feet more or less along the southern property line of said Katherine F. Pegram to a point in one Phyliss C. Underwood's property line; thence in a southerly direction some 40 feet more or less along the property line of said Phyliss C. Underwood to the southwest most corner of Phyliss C. Underwood's property; thence in an east-northeasterly direction some 1700 feet more or less along the southern property line of said Phyliss C. Underwood to the southeast corner of said Phyliss C. Underwood's property, the same being a point in the common property line between said Phyliss C. Underwood and one Rush Hardin; thence in an east-northeasterly direction some 1160 feet more or less along the southern property line of said Rush Hardin to the southeast corner of said Rush Hardin's property; thence in a north-northwesterly direction some 2400 feet more or less along the eastern property line of said Rush Hardin to a corner in the property line of said Rush Hardin; thence in a west-southwesterly direction some 425 feet more or less along the property line of said Rush Hardin to a Corner in the property line of said Rush Hardin; thence in a north-northwesterly direction some 2870 feet more or less along the eastern property line of said Rush Hardin to a point in the property line of one Walter L. Combs southern property line; thence in an easterly direction some 1040 feet more or less along the property line of said Walter L. Combs to a point on Highway US 220; thence in a north-northwesterly direction some 1200 feet more or less along said

Highway US 220; thence in a westerly direction some 2850 feet more or less along the north property line of said Walter L. Combs property; thence continuing in a westerly direction some 920 feet more or less on a property line through one Vulcan Materials property to a corner in said Vulcan Materials property; thence in a northerly direction some 1480 feet more or less on a property line through said Vulcan Materials property to a point in the west by northwest property line of one Duke Power Company; thence continuing in a northerly direction some 270 feet more or less to a corner in the common property line between said Duke Power and one Mary O. Blackburn; thence in a north to northwesterly to westerly to southwesterly direction some 2980 feet more or less meandering along the common property line between said Duke Power and said Mary O. Blackburn to a common corner where the said Duke Power property line meets the Vulcan Materials property line; thence in a southwesterly direction some 990 feet more or less along the property line of one Lewis Vernon to a corner in said Lewis Vernon's property line; thence in a southwesterly direction some 240 feet more or less along the property line of said Lewis Vernon to a common corner of said Lewis Vernon and one Michael H. Reid; thence in a northerly direction some 75 feet more or less to a corner in said Lewis Vernon's property line; thence in a north-northwesterly direction some 1200 feet more or less on a line across the property of said Michael H. Reid to a point on the said Michael H. Reid property; thence in a northwesterly direction some 300 feet more or less on a line across the property of said Michael H. Reid to the eastern most corner of one Florence L. Southard property; thence in a northwesterly direction some 340 feet more or less along the eastern property line of said Florence L. Southard; thence in a northwesterly direction some 680 feet more or less along the eastern property line of one Dewey A. Southard and others to a point in the Guilford-Rockingham County line; thence in a westerly direction some 26,020 feet more or less along said Guilford-Rockingham County line to the point and place of beginning.

The above delineated boundaries of the Town of Stokesdale are as shown on the Guilford County Tax Maps:

ACL - 2 - 72	ACL - 1 - 39
ACL - 2 - 70	ACL - 10 - 658
ACL - 6 - 376	ACL - 1 - 62
ACL - 1 - 58	and ACL - -379,
ACL - 10 - 656	

and are the same boundaries as are delineated on the above said Guilford County Tax Maps and designated as the Stokesdale Fire District Lines."

Sec. 2. This act shall become effective at the same time as the Charter of the Town of Stokesdale became effective.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

S.B. 1419

CHAPTER 957**AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF REIDSVILLE.**

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Reidsville is revised and consolidated to read as follows:

"THE CHARTER OF THE CITY OF REIDSVILLE.

**"ARTICLE I. INCORPORATION, CORPORATE POWERS
AND BOUNDARIES.**

"Section 1.1. *Incorporation.* The City of Reidsville, North Carolina in Rockingham County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'City of Reidsville,' hereinafter at times referred to as the 'City.'

"Section 1.2. *Powers.* The City shall have and may exercise all of the powers, duties, rights, privileges and immunities conferred upon the City of Reidsville specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. *Corporate Limits.* The corporate limits shall be those existing at the time of ratification of this Charter, as set forth on the official map of the City and as they may be altered from time to time in accordance with law. An official map of the City, showing the current boundaries, shall be maintained permanently in the office of the City Clerk and shall be available for public inspection. Immediately upon alteration of the corporate limits made pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Rockingham County Register of Deeds and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. *Mayor and City Council.* The Mayor and the City Council, hereinafter referred to as the 'Council,' shall be the governing body of the City.

"Section 2.2. *City Council; Composition; Terms of Office.* The Council shall be composed of five members elected by all the qualified

voters of the City for terms of two years or until their successors are elected and qualified.

"Section 2.3. *Mayor; Term of Office; Duties.* The Council shall elect one of its members to serve as Mayor for a term of two years. The Mayor shall be the official head of the City Government and preside at meetings of the Council, shall have the right to vote on all matters before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. *Mayor Pro Tempore.* The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity until the organizational meeting following the next regular municipal election, despite the contrary provisions of G.S. 160A-70.

"Section 2.5. *Meetings.* In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. *Voting requirements; Quorum.* Official actions of the Council and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. A majority of the membership of the Council shall constitute a quorum.

"Section 2.7. *Compensation; Qualifications for Office; Vacancies.* The compensation and qualifications of the Mayor and Council shall be in accordance with general law. Vacancies that occur in any elective office of the City shall be filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Section 3.1. *Regular Municipal Elections.* Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections are conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 3.2. *Election of Council.* Five Council members shall be elected in each regular municipal election.

"Section 3.3. *Special Elections and Referendums.* Special elections and referendums may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. *Form of Government.* The City shall operate under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. *City Manager.* The Council shall appoint a City Manager who shall be responsible for the administration of all departments of the City government. The City Manager shall have all

the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

"Section 4.3. *City Attorney*. The Council shall appoint a City Attorney licensed to practice law in North Carolina. It shall be the duty of the City Attorney to represent the City, advise City officials and perform other duties required by law or as the Council may direct.

"Section 4.4. *City Clerk*. The City Manager shall appoint a City Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Manager may direct.

"Section 4.5. *Tax Collector*. The City Manager shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the City, subject to general law, this Charter and City ordinances.

"Section 4.6. *Other Administrative Officers and Employees*. The Council may authorize other positions to be filled by appointment by the City Manager, and may organize the City government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. PUBLIC IMPROVEMENTS.

"Section 5.1. *Assessments for Street Improvements; Petition Unnecessary*.

(a) In addition to any authority granted by general law, the Council may order street improvements and to assess the costs thereof against abutting property in accordance with the provisions of this Article.

(b) The Council may order street improvements and assess the total costs thereof against abutting property, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes without the necessity of a petition, upon the following findings of fact:

- (1) That the street improvement project does not exceed 2,500 linear feet; and
- (2) That such street or part thereof is unsafe for vehicular traffic or creates a safety or health hazard and it is in the public interest to make such improvements; or
- (3) That it is in the public interest to connect two streets or portions of a street already improved; or
- (4) That it is in the public interest to widen a street, or part thereof, which is already improved; provided that assessments for widening any street or portion of a street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with street

classification and improvement standards established by the City, as applied to the particular street or part thereof.

(c) For the purpose of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, acquisition of right-of-way and construction or reconstruction of curbs, gutters and street drainage facilities.

"Section 5.2. Assessments for Sidewalk Improvements; Petition Unnecessary. In addition to any authority granted by general law, the Council may, without the necessity of a petition, order sidewalk improvements or repairs according to standards and specifications of the city, and to assess the total costs thereof against abutting property, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes provided that regardless of the assessment basis or bases employed, the Council may order the costs of sidewalk improvements made only on one side of a street to be assessed against property abutting both sides of such street.

"Section 5.3. Procedure; Effect of Assessment. In ordering street and sidewalk improvements without a petition and assessing the costs thereof under authority of this Article, the Council shall comply with the procedures required by Article 10 Chapter 160A of the General Statutes except those provisions relating to petitions of property owners and sufficiency thereof. The effect of the act of levying assessments under authority of this Article shall be the same as if assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"ARTICLE VI. ADDITIONAL PROVISIONS.

"Section 6.1 Termination of Utility Service; Charges Become Liens.

(a) Notwithstanding the provisions of G.S. 160A-314, or any other provisions of law, in case any charges for water service or sewerage service due and owing to the City are not paid, then such charges and any penalties assessed for nonpayment shall become a lien upon the property served or in connection with which service is used, upon compliance with the procedure set out in this section; provided, however, that no such charges shall become a lien unless the same were incurred by the owner of the particular property.

(b) Upon nonpayment, the City shall give the customer a fair opportunity to avoid termination of utility service and application of the charges and penalties as a lien against the property, by paying charges due or showing that the charges are in error. As soon as possible following the specified past due date, written notice of delinquency shall be sent to the customer by first-class mail.

(c) The notice required by subsection (b) shall contain the following information:

- (1) The amount which must be paid to avoid termination;
- (2) The date on which termination will occur, which must be at least 10 days after the mailing date;
- (3) A statement that the customer may appear at City Hall between the hours of 9:00 a.m. and 4:00 p.m. on any business day and request an informal hearing with the City Manager or designee, for the purpose of showing error or working out a satisfactory extended payment arrangement; and
- (4) A statement that failure by the customer to appear and show error, make payment or work out a satisfactory extended payment arrangement shall result in the charges and penalties being applied as a lien against the real property, which may be enforced by sale of the real property as provided by law.

(d) The employee responsible for mailing the notice as provided in subsections (b) and (c) shall certify the date on which the notice was mailed, on a form or in a record book or electronic medium designed for that purpose.

(e) If the customer does not make acceptable payment arrangements and fails to show cause why service should not be terminated and the charges and penalties applied as a lien against the property, service may be terminated on or after the date specified in the notice of termination, and the charges and penalties may be applied as a lien against the property. Service may be terminated between the hours of 8:30 a.m. and 4:00 p.m. on business days from Monday through Thursday only. If the customer fails to comply with the agreed-upon extended payment arrangements, service may be terminated without further notice and the charges and penalties may be applied as a lien.

(f) Unpaid charges and penalties may at any time be collected by civil action in the name of the City. In addition, the charges and penalties may be collected by the City Tax Collector by sale of the property to which the lien attaches, as provided in G.S. 105-375, and the lien shall be treated as a property tax lien for the purposes of that statute. The lien shall attach on the date on which the certificate of charges due is docketed as provided in G.S. 105-375(d), and shall continue until the principal amount of the charges plus penalties, interest and costs allowed by law have been fully paid.

"Section 6.2. Acceptance of Conveyance of Real Property for Liens. Despite G.S. 105-357(a) and other provision of law, the Council, by resolution, may accept conveyance of real property on which the City has a lien, in full or partial satisfaction of the tax, special assessment, or other charge or liability underlying the lien,

including the expense of transferring title to the City. The resolution shall order the lien cancelled of record, or reduced to the extent the liability underlying the lien is satisfied. Acceptance of conveyance by the City does not affect a lien on the property held by a person or entity other than the City. Property conveyed to the City under this section may be disposed of subsequently by the City under any of the methods provided in Article 12 of Chapter 160A of the General Statutes, including private sale under G.S. 160A-267.

"Section 6.3. Aid to the Poor. The City of Reidsville, by and through its City Council, shall have the power to make an annual appropriation to aid and support its indigent citizens. The funds thus appropriated may be expended by the Council itself, or the authority to make expenditures of designated amounts from said appropriation may be delegated by the Council to the Reidsville United Way, the Reidsville Unit of the Salvation Army, or any other organized charity approved by the Council and operating in the City. Any expenditure of said funds by the charitable organizations shall be made under rules promulgated by the Council and shall at all times be subject to the control and supervision of the Council.

"Section 6.4. Water Rates for Senior Citizens. Reduction of Water rates for senior citizens shall be authorized as provided by Chapter 125, Session Laws of 1983.

"Section 6.5. Alcoholic Beverages. Alcoholic Beverage Control Stores shall operate within the City of Reidsville as provided in Chapter 650, Session Laws of 1965, as amended by Chapter 616, Session Laws of 1967; Chapter 615, Session Laws of 1971; Chapter 822, Session Laws of 1971; and Chapter 128, Session Laws of 1987. The sale, purchase, possession and transportation of alcoholic beverages shall be governed by the provisions of Chapter 18B of the General Statutes, as amended by Chapter 617, Session Laws of 1969.

"Section 6.6. Reidsville Firemen's Supplemental Retirement Fund. The Reidsville Firemen's Supplemental Retirement Fund shall continue as authorized by Chapter 94, Session Laws of 1979, as amended by Chapter 1235, Session Laws of 1981 (Regular Session 1982) and Chapter 278, Session Laws of 1989."

Sec. 2. The purpose of this act is to revise the Charter of the City of Reidsville and to consolidate certain acts concerning the property, affairs and government of the City. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. Notwithstanding Section 4 of this act, this act does not repeal or affect any acts or portions of acts concerning the property.

affairs or government of public schools, or acts validating official actions, proceedings, contracts or obligations of any kind.

Sec. 4. All local acts concerning the City of Reidsville which were ratified before June 15, 1961, are repealed, with the exception of validating acts, acts affecting public schools, and Chapter 369, Session Laws of 1949. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 831, Session Laws of 1961

Chapter 909, Session Laws of 1961

Chapter 958, Session Laws of 1973 (Second Session 1974).

Sec. 5. Chapter 650, Session Laws of 1965 and Chapter 617, Session Laws of 1969, as it applies to the City of Reidsville, are deemed amended to change each reference to "G.S. Chapter 18," or the equivalent, to "G.S. Chapter 18B." References to particular sections or Articles of former G.S. Chapter 18 are deemed amended to refer to the provisions of current G.S. Chapter 18B which most closely correspond, and as they may be later amended or recodified.

Sec. 6. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms. Thereafter those offices shall be filled as provided in Articles II and III of the Charter contained in Section 1 of this act.

Sec. 7. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 8. All existing ordinances, resolutions and other provisions of the City of Reidsville not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 9. No action or proceeding pending on the effective date of this act by or against the City or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 10. If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 11. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

S.B. 1509

CHAPTER 958

AN ACT TO AUTHORIZE WATER COLUMN LEASES FOR AQUACULTURE WITHIN RECOGNIZED SHELLFISH FRANCHISES AND TO DELAY ACTION TO TERMINATE SHELLFISH CULTIVATION LEASES FOR ONE YEAR.

The General Assembly of North Carolina enacts:

Section 1. Article 16 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-202.2. Water column leases for aquaculture for perpetual franchises.

(a) To increase the productivity of shellfish grants and perpetual franchises for shellfish culture recognized under G.S. 113-206, the Marine Fisheries Commission may lease the water column superjacent to such grants or perpetual franchises (hereinafter 'perpetual franchises') under the terms of this section when it determines the public interest will benefit from the lease. Perpetual franchises with water column leases must produce shellfish in commercial quantities at four times the minimum production rate of leases issued under G.S. 113-202, or any higher quantity required by the Commission by rule.

(b) Suitable areas for the authorization of water column use shall meet the following minimum standards:

- (1) Aquaculture use of the leased water column area must not significantly impair navigation;
- (2) The leased water column area must not be within a navigation channel marked or maintained by a State or federal agency;
- (3) The leased water column area must not be within an area traditionally used and available for fishing or hunting activities incompatible with the activities proposed by the perpetual franchise holder, such as trawling or seining;
- (4) Aquaculture use of the leased water column area must not significantly interfere with the exercise of riparian rights by adjacent property owners including access to navigation channels from piers or other means of access;
- (5) The leased water column area may not exceed 10 acres for grants or perpetual franchises recognized pursuant to G.S. 113-206;
- (6) The leased water column area must not extend more than one-third of the distance across any body of water or into the channel third of any body of water for grants or perpetual franchises recognized pursuant to G.S. 113-206; and

(7) Any additional rules to protect the public interest in coastal fishing waters adopted by the Commission.

(c) The Commission shall not lease the water column superjacent to oyster or other shellfish grants or perpetual franchises unless:

(1) The perpetual franchise holder submits an application, accompanied by a nonrefundable application fee of one hundred dollars (\$100.00), which conforms to the standards for lease applications in G.S. 113-202(d) and rules adopted by the Commission;

(2) Notice of the proposed lease has been given consistent with G.S. 113-202(f);

(3) Public hearings have been conducted consistent with G.S. 113-202(g);

(4) The aspects of the proposals which require use and dedication of the water column have been documented and are recognized by the Commission as commercially feasible forms of aquaculture which will enhance shellfish production;

(5) It is not feasible to undertake the aquaculture activity outside of coastal fishing waters; and

(6) The authorized water column use has the least disruptive effect on other public trust uses of the waters of any available technology to produce the shellfish identified in the proposal.

(d) Water column leases to perpetual franchises shall be issued for a period of five years and may be renewed pursuant to subsection (g) of this section. The annual rental for water column leases shall be five hundred dollars (\$500.00) per acre, prorated, or the then current renewal rate, whichever is greater.

(e) Water column leases to perpetual franchises may be terminated for unauthorized or unlawful interference with the exercise of public trust rights by the leaseholder or his agents or employees.

(f) Water column leases to perpetual franchises are not transferrable except when the Commission approves the transfer after public notice and hearing consistent with G.S. 113-202(f) and (g).

(g) After public notice and hearing consistent with G.S. 113-202(f) and (g), the Commission may renew a water column lease, in whole or in part, if the leaseholder has produced commercial quantities of shellfish and has otherwise complied with this section and the rules of the Commission. Renewals may be denied or reduced in scope when the public interest so requires. Appeal of renewal decisions shall be conducted in accordance with G.S. 113-202(p). Renewals are subject to the lease terms and rates set out in subsection (d) of this section.

(h) The procedures and requirements of G.S. 113-202 shall apply to proposed water column leases or water column leases to perpetual franchises considered under this section except that more specific provisions of this section control conflicts between the two sections.

(i) Demonstration or research aquaculture development projects may be authorized for two years with no more than one renewal and when the project is proposed or formally sponsored by an educational institution which conducts aquaculture research or demonstration projects. Production of shellfish with a sales value in excess of one thousand dollars (\$1,000) per acre per year shall constitute commercial production. Demonstration or research aquaculture development projects shall be exempt from the rental rate in subsection (d) of this section unless commercial production occurs as a result of the project."

Sec. 2. Effective upon ratification of this act and until July 1, 1991, the Secretary shall not commence or continue action to terminate any shellfish cultivation leases for failure to utilize the leasehold for commercial production pursuant to G.S. 113-202(l)(5). The term of any lease expiring during that interval which would not be renewed for failure to produce shellfish in commercial quantities pursuant to G.S. 113-202(p) is extended until July 1, 1991.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

S.B. 1616

CHAPTER 959

AN ACT TO ALTER THE MANNER FOR SELECTING
DRAINAGE COMMISSIONERS AND TO PROVIDE NOTICE
PRIOR TO ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 156 of the General Statutes is amended by adding a new section to read:

"§ 156-82.2. *Appointment of drainage commissioners.*

Notwithstanding any other provision of law (including, where applicable, any special acts or local modification of general law), the General Assembly hereby appoints all sitting drainage district commissioners and drainage commission treasurers, as of the date of ratification of this section, as commissioners, officers, and treasurers of their respective districts. Said commissioners, officers, and treasurers shall continue in office until such time as appointments shall be made as provided in G.S. 156-81 and G.S. 156-81.1, which

appointments shall be made by the clerk or clerks of the superior court not later than January 1, 1991."

Sec. 2. G.S. 156-79 reads as rewritten:

" § 156-79. ~~Election~~ Appointment and organization under original act.

After the drainage district has been declared established, as aforesaid, and the survey and plan therefor approved, the court shall appoint three persons, in the manner set forth in G.S. 156-81, who shall be designated as the board of drainage commissioners. ~~Such drainage commissioners shall first be elected by the owners of land within the drainage or levee district, or by a majority of same, in such manner as the court shall prescribe. The court shall appoint those receiving a majority of the votes. If any one or more of such proposed commissioners shall not receive the vote of a majority of such landowners the court shall appoint all or the remainder from among those voted for in the election.~~ Any vacancy thereafter occurring shall be filled by the clerk or clerks of the superior ~~court~~ court in the manner set forth in G.S. 156-81. Such three drainage commissioners, when so appointed, shall be immediately created a body corporate under the name and style of 'The Board of Drainage Commissioners ofDistrict,' with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and a vice-chairman. They shall also elect a secretary, either within or without their body. Such board of drainage commissioners shall adopt a seal, which they may alter at pleasure. The board of drainage commissioners shall have and possess such powers as are herein granted."

Sec. 3. G.S. 156-81 reads as rewritten:

" § 156-81. ~~Election~~ Appointment and organization under amended act.

(a) Method of ~~Election~~ Appointment. -- ~~In the election of drainage commissioners by the owners of land, each landowner shall be entitled to cast the number of votes equaling the number of acres of land owned by him and benefited, as appears by the final report of the viewers. Each landowner may vote for the names of three persons for commissioners. If any person or persons in any district shall own land in any district containing an area greater than one half of the total area in the district, such owner shall only be permitted to elect two of the drainage commissioners, and a separate election shall be held under the direction of the clerk by the minority landowners, who shall elect one member of the drainage commissioners.~~

~~In lieu of the above method of election of drainage commissioners, the clerk of the superior court may, in his discretion, appoint such drainage commissioners and such drainage commissioners so~~

~~appointed by the clerk shall have the same authority as if they had been elected by the method above described.~~

The manner of appointment shall be as follows:

- (1) If the drainage district shall lie solely within one county, the clerk of superior court for such county shall appoint such commissioners.
- (2) If the said district shall lie in more than one county, then such commissioners shall be appointed by unanimous action of the clerks of court for the counties wherein any part of such district lies.

(b) Organization. -- ~~Immediately after the election appointment of the board of drainage commissioners, and after the members of the board shall be appointed by the clerk,~~ the clerk of the court of the county wherein such drainage proceeding is pending shall notify each of them the commissioners in writing to appear at a certain time and place within the county district and organize. The clerk of the superior court or clerks of court, as the case may be, shall appoint one of the three members as chairman of the board of drainage commissioners, and in doing so he or they shall consider carefully and impartially the respective qualifications of each of the members for the position.

(c) Term of Office. -- ~~The term of service of the members of the board of drainage commissioners so elected and appointed shall begin immediately after their organization, upon their appointment. Where all three commissioners are appointed at once, one One commissioner shall serve for one year, one for two years, and the other for three years, the term to be computed from the first day of October following their organization. The members so serving for one, two, and three years, respectively, shall be unanimously designated by the clerk or clerks of the court or designated by lot among the members, in the discretion of the clerk, court. Thereafter each member shall be elected appointed for three years. In the year when the term of any member or members shall expire the clerk of the court shall provide for an election of their successors to be held on the second Monday in August preceding the expiration of their term on the thirtieth day of September.~~ The clerk of the court for the county wherein the proceeding is pending shall record in the drainage record the date of election, appointment, the members elected, appointed, and the beginning and expiration of their term of office.

(d) Vacancies Filled. -- ~~If a vacancy shall occur in the office of any commissioner by death, resignation, or otherwise, the remaining two members are to discharge the necessary duties of the board until the vacancy shall be filled; and if the vacancy shall be in the office of chairman or secretary, the two remaining members may elect a secretary, and the clerk or clerks, as the case may be, shall appoint~~

one of the two remaining members to act as chairman to hold until the vacancy in the board shall be filled. The clerk of the county wherein the proceeding is pending shall keep a similar record of any election appointment to fill vacancies, and the member or members shall be elected in like manner as the original members, vacancies. The person appointed to fill the vacancy shall be appointed in the manner set forth in subsection (a) of this section and shall serve until the expiration of the term of his predecessor. The secretary of the board of drainage commissioners shall promptly notify the appropriate clerk or clerks of the superior court of any vacancy in the board.

(e) Failure to Elect, Appoint. -- If for any reason the clerk or clerks of the court shall fail to provide for an election the appointment of drainage commissioners on the second Monday in August to succeed those whose terms will expire on the thirtieth day of September, the clerk shall have authority at the most convenient date thereafter to provide for such election, and in the meantime prior to the expiration of a term, the incumbents shall continue to hold their office as commissioners until their successors are elected appointed and qualified. The term of office of boards of drainage commissioners heretofore elected and appointed shall expire on the thirtieth day of September, 1917, and their successors shall be elected on the second Monday in August, 1917, in the manner provided by law, immediately upon the appointment of new commissioners pursuant to subsection (a) of this section.

(f) Meetings. -- The board shall meet once each month at a stated time and place during the progress of drainage construction, and more often if necessary. After the drainage work is completed, or at any time, the chairman shall have the power to call special meetings of the board at a certain time and place. The chairman shall also call a meeting at any time upon the written request of the owner owners of a majority in area of the land in the district.

(g) Compensation. -- The chairman of the board of drainage commissioners shall receive compensation and allowances as fixed by the clerk of the superior court. In fixing such compensation and allowances, the clerk shall give due consideration to the duties and responsibilities imposed upon the chairman of the board. The other members of the board shall receive a per diem not to exceed twenty-five dollars (\$25.00) a day, while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The secretary of the board shall receive such compensation and expense allowances as may be determined by the board.

The chairman and members of the board of drainage commissioners shall also receive their actual travel and subsistence expenses while engaged in attendance upon meetings of the board, or in the discharge

of duties imposed by the board. The compensation and expense allowances as herein set out shall be paid from the assessments made annually for the purpose of maintaining the canals of the drainage district, or from any other funds of the district.

(h) Application of Section. -- The provisions of this section shall apply to all drainage districts now or hereafter existing in this State, without regard to the date of organization, ~~whether before or after April 14, 1949, organization.~~

~~(i) Appointment by Clerk of Superior Court as Alternative to Election. -- In lieu of the methods of election and filling of vacancies in the position of drainage commissioner as provided in G.S. 156-79 and this section, the clerk of the superior court may, in his discretion, appoint such drainage commissioners and fill such vacancies, and such drainage commissioners so appointed by the clerk shall have the same authority and responsibility as if they had been elected or appointed as provided under G.S. 156-79 or this section."~~

Sec. 4. G.S. 156-93.1(a) reads as rewritten:

"(a) The board of drainage commissioners may annually levy maintenance assessments in the same ratio as the existing classification of the lands within the district. The amount of these assessments shall be determined by the board of drainage commissioners and ~~must be approved by the clerk of the superior court prior to their annual levy,~~ of the district. The proceeds of these assessments shall be used for the purpose of maintaining canals of the drainage district in an efficient operating condition and for the necessary operating expenses of the ~~district as approved by the clerk of the superior court, district.~~ In the event that any interested and aggrieved party disagrees with the said assessment, he may, within 20 days of the mailing of the notice of the assessment, file with the clerk for the county wherein the proceeding is pending, a notice specifically setting forth his objection. The Secretary of the District shall file in the records of the proceeding a certification setting forth the date of the mailing of the notice of the annual maintenance assessments. The clerk shall thereupon notify the senior resident superior court judge of such district who shall set the objection down for hearing at the earliest possible time. The court shall hear the matter upon the objections duly set forth in the notice of objection. Notice of the meeting at which the board of drainage commissioners determines the amount of the annual levy shall be published in a newspaper of general circulation in the area for four successive days, not more than 30 or less than 10 days prior to the meeting. The notice shall be not less than one-fourth page in size and shall state the time, place, and purpose of the meeting. At such meeting any interested person shall have the right to be heard prior to action on the proposed assessment.

The board of drainage commissioners shall have the authority to employ engineering assistance, construction equipment, superintendents and operators for the equipment necessary for the efficient maintenance of the canals, or the maintenance may be done by private contract made after due advertisement as required for the original construction work."

Sec. 5. Chapter 156 of the General Statutes is amended by adding a new section to read:

" § 156-82.3. Validation of Previous Actions.

(a) All expenditures heretofore incurred, and all actions heretofore taken, by a drainage district for purposes authorized by this Chapter are hereby validated notwithstanding any defect in the selection of any or all of its commissioners or any other defect.

(b) The provisions of this section are expressly made applicable to any and all bonds and other financial obligations of any such district. No action based on the alleged invalidity of the assessments heretofore made or of any such bonds or other obligations of a district shall lie after January 1, 1991, to enjoin or contest the enforceability of any such assessment, bond, or other obligation."

Sec. 6. G.S. 156-81.1 reads as rewritten:

" § 156-81.1. Treasurer.

~~The clerk of the superior court for the county where the district was organized,~~ appointing authority as determined by G.S. 156-81 shall appoint a treasurer for the drainage district for a term not to exceed 12 months. The treasurer so appointed may be a member of the board of commissioners of the district or some other person deemed competent, and shall furnish bond as may be required by the said clerk of the superior court. The treasurer shall continue in office until a successor has been appointed and qualified.

All references in Subchapter III of Chapter 156 of the General Statutes of North Carolina, to 'treasurer' or 'county treasurer' or 'county auditor' are hereby amended to refer exclusively to the treasurer appointed as hereinbefore provided."

Sec. 7. If any provision or clause of this Chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

S.B. 1617

CHAPTER 960

AN ACT TO PROVIDE THAT THE GOVERNING BODY OF A TAXING UNIT MAY DELAY THE ACCRUAL OF INTEREST ON CERTAIN UNPAID PROPERTY TAXES.

The General Assembly of North Carolina enacts:

Section 1. A taxing unit's governing body may by resolution provide that, notwithstanding the provisions of G.S. 105-360 regarding the accrual of interest and G.S. 105-380 and G.S. 105-381 regarding the release, refund, compromise of taxes, interest shall not accrue on unpaid taxes for fiscal year 1989-90 unless the taxes remain unpaid after July 1, 1990. Interest accruing on taxes that remain unpaid after July 1, 1990, shall be computed according to the schedule stated in G.S. 105-360 in the same manner as though the taxes were unpaid as of January 6, 1990. A resolution adopted pursuant to this act may apply only to fiscal year 1989-90 taxes, receipts of which were not delivered to the tax collector before January 1, 1990.

Sec. 2. A resolution adopted by a taxing unit's governing body pursuant to this act relieves the tax collector of that taxing unit of any obligation to collect interest on taxes to which the resolution applies that are paid on or before July 1, 1990. After adoption of the resolution, the governing body of the taxing unit or its delegatee may refund any interest subject to Section 1 of this act that was paid by a taxpayer between January 7, 1990, and July 1, 1990.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

H.B. 2197

CHAPTER 961

AN ACT TO REPEAL AN ANNEXATION OF THE TOWN OF LELAND.

The General Assembly of North Carolina enacts:

Section 1. The annexation ordinance of the Town of Leland, adopted on July 5, 1990, is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

H.B. 2227

CHAPTER 962

AN ACT TO PROVIDE FOR ACQUISITION OF RIGHT-OF-WAY BY THE DEPARTMENT OF TRANSPORTATION FOR LOCATION AND RELOCATION OF UTILITY INFRASTRUCTURE AND TO CLARIFY THE REGULATORY AUTHORITY OF THE UTILITIES COMMISSION WITH REGARD TO NATURAL GAS.

Whereas, many citizens of the State are not served with utilities necessary for their health, safety and welfare, such as natural gas, water and sewerage; and

Whereas, the State owns or controls rights-of-way for roads, and will be acquiring significant additional rights-of-way in the future, and such rights-of-way can form natural and economical corridors for the location or relocation of essential utilities; and

Whereas, the power to acquire rights-of-way presently vested in the Department of Transportation is restricted to acquisition of the amount needed for road construction and maintenance, which in some cases is not adequate to accommodate utilities; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-18 reads as rewritten:

" § 136-18. *Powers of Department of Transportation.*

The said Department of Transportation shall be vested with the following powers:

- ...
- (2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location

thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

- (10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, ~~telegraph or other poles,~~ telegraph, electric and other lines, above or below ground, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any ~~wise way~~ interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other poles, ~~lines,~~ signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a misdemeanor.

Sec. 2. G.S. 136-19 reads as rewritten:

" § 136-19. *Acquirement of land and deposits of materials; condemnation proceedings; federal parkways.*

The Department of Transportation is vested with the power to acquire either in the nature of an appropriate easement or in fee

simple such rights-of-way and title to such land, gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime or other earth or mineral deposits or formations, and such standing timber as it may deem necessary and suitable for road construction, maintenance, and repair, and the necessary approaches and ways through, and a sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to properly prosecute the work, either by purchase, donation, or condemnation, in the manner hereinafter set out. If any parcel is acquired in fee simple as authorized by this section and the Department of Transportation later determines that the parcel is not needed for highway purposes, first consideration shall be given to any offer to repurchase made by the owner from whom said parcel was acquired or the heirs or assigns of such owner. The Department of Transportation is also vested with the power to acquire such additional land alongside of the rights-of-way or roads as in its opinion may be necessary and proper for the protection of the roads and roadways, and such additional area as may be necessary as by it determined for approaches to and from such material and other requisite area as may be desired by it for working purposes. The Department of Transportation may, in its discretion, with the consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so doing, the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for right-of-way purposes.

Notwithstanding any other provisions of law or eminent domain powers of utility companies, utility membership corporations, municipalities, counties, entities created by political subdivisions, or any combination thereof, and in order to prevent undue delay of highway projects because of utility conflicts, the Department of Transportation may condemn or acquire property in fee or appropriate easements necessary to provide highway rights-of-way for the relocation of utilities when required in the construction, reconstruction, or rehabilitation of a State highway project. The Department of Transportation shall also have the authority, subject to the provisions of G.S. 136-19.5(a) and (b), to, in its discretion, acquire rights-of-way necessary for the present or future placement of utilities as described in G.S. 136-18(2).

Whenever the Department of Transportation and the owner or owners of the lands, materials, and timber required by the Department of Transportation to carry on the work as herein provided for, are unable to agree as to the price thereof, the Department of Transportation is hereby vested with the power to condemn the lands.

materials, and timber and in so doing the ways, means, methods, and procedure of Article 9 of this Chapter shall be used by it exclusively.

The Department of Transportation shall have the same authority, under the same provisions of law provided for construction of State highways, for acquirement of all rights-of-way and easements necessary to comply with the rules and regulations of the United States government for the construction of federal parkways and entrance roads to federal parks in the State of North Carolina. The acquirement of a total of 125 acres per mile of said parkways, including roadway and recreational, and scenic areas on either side thereof, shall be deemed a reasonable area for said purpose. The right-of-way acquired or appropriated may, at the option of the Department of Transportation, be a fee-simple title. The said Department of Transportation is hereby authorized to convey such title so acquired to the United States government, or its appropriate agency, free and clear of all claims for compensation. All compensation contracted to be paid or legally assessed shall be a valid claim against the Department of Transportation, payable out of the State Highway Fund. Any conveyance to the United States Department of Interior of land acquired as provided by this section shall contain a provision whereby the State of North Carolina shall retain concurrent jurisdiction over the areas conveyed. The Governor is further authorized to grant concurrent jurisdiction to lands already conveyed to the United States Department of Interior for parkways and entrances to parkways.

The action of the Department of Transportation heretofore taken in the acquirement of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United States government is hereby ratified and approved and declared to be a reasonable exercise of the discretion vested in the said Department of Transportation in furtherance of the public interest.

When areas have been tentatively designated by the United States government to be included within a parkway, but the final survey necessary for the filing of maps as provided in this section has not yet been made, no person shall cut or remove any timber from said areas pending the filing of said maps after receiving notice from the Department of Transportation that such area is under investigation; and any property owner who suffers loss by reason of the restraint upon his right to use the said timber pending such investigation shall be entitled to recover compensation from the Department of Transportation for the temporary appropriation of his property, in the event the same is not finally included within the appropriated area, and the provisions of this section may be enforced under the same law now applicable for the adjustment of compensation in the acquirement

of rights-of-way on other property by the Department of Transportation."

Sec. 3. Chapter 136 of the General Statutes is amended by adding the following section:

"§ 136-19.5. Utility right-of-way agreements.

(a) Before the Department of Transportation acquires or proposes to acquire additional rights-of-way for the purpose of accommodating the installation of utilities as authorized by G.S. 136-18 and G.S. 136-19, there shall first be voluntary agreements with the appropriate utilities regarding the acquisition and use of the particular right-of-way and requiring the payment to the Department of Transportation for or recapture of all of its costs associated with that acquisition, including the use of funds allocated to such acquisition. Such agreements may take into account the fact that more than one utility can make use of the right-of-way. No such agreement shall constitute a sale of the right-of-way and all such rights-of-way shall remain under the control of the Department of Transportation.

(b) A prior agreement between the Department of Transportation and the affected utilities may be entered into but is not required when the acquisition of right-of-way is for the purpose of relocation of utilities due to construction, reconstruction, or rehabilitation of a State highway project. The Department of Transportation shall notify the affected utility whose facilities are being relocated and the affected utility may choose not to participate in the proposed plan for right-of-way acquisition. The decision not to participate in the proposed plan of right-of-way acquisition shall not affect any other rights the utility may have as a result of the relocation of its lines or pipelines.

(c) Whenever the Department of Transportation requires the relocation of utilities located in a right-of-way for which the utility owner contributed to the cost of acquisition, the Department of Transportation shall reimburse the utility owner for the cost of moving those utilities.

(d) Any additional right-of-way obtained pursuant to this section which is part of a railroad right-of-way shall be returned to the railroad or its successor in interest when the Department of Transportation and the affected utilities agree that the additional right-of-way is no longer useful for utility purposes and the Department of Transportation determines that it is no longer useful for highway purposes."

Sec. 4. G.S. 62-133(b) reads as rewritten:

"(b) In fixing such rates, the Commission shall:

- (1a) Apply the rate of return established under subdivision (4) of this subsection to rights-of-way acquired through

agreements with the Department of Transportation pursuant to G.S. 136-19.5(a) if acquisition is consistent with a definite plan to provide service within five years of the date of the agreement and if such right-of-way acquisition will result in benefits to the ratepayers. If a right-of-way is not used within a reasonable time after the expiration of the five-year period, it may be removed from the rate base by the Commission when rates for the public utility are next established under this section.

- (5) Fix such rates to be charged by the public utility as will earn in addition to reasonable operating expenses ascertained pursuant to subdivision (3) of this subsection the rate of return fixed pursuant to subdivisions (4) and (4a) on the cost of the public utility's property ascertained pursuant to ~~subdivision (1).~~ subdivisions (1) and (1a) of this subsection.

Sec. 5. Chapter 62 of the General Statutes is amended by adding the following new section:

"§ 62-36B. Regulation of natural gas service agreements.

Whenever the Commission, after notice and hearing, finds that additional natural gas service agreements (including 'backhaul' agreements) with interstate or intrastate pipelines will provide increased competition in North Carolina's natural gas industry and (i) will likely result in lower costs to consumers without substantially increasing the risks of service interruptions to customers, or (ii) will substantially reduce the risks of service interruptions without unduly increasing costs to consumers, the Commission may enter and serve an order directing the franchised natural gas local distribution company to negotiate in good faith to enter into such service agreements within a reasonable time. In considering costs to consumers under this section, the Commission may consider both short-term and long-term costs."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

AN ACT TO ALLOW DARE COUNTY TO ESTABLISH A SPECIAL LEASH LAW DISTRICT, APPLY A LEASH LAW WITHIN THAT DISTRICT, AND LEVY A TAX IN THAT DISTRICT FOR ENFORCEMENT OF THE LEASH LAW.

The General Assembly of North Carolina enacts:

Section 1. The board of commissioners of a county may, after approval of the voters of the area of that proposed district under Section 3 of this act, create within that county one or more special districts under this act, except that no territory may be within more than one such special district. The special district shall be known as the "____ Leash Law District" or as the "____ Dog Restraint District", with the name of the county and/or geographical area and/or number of the district filled in by the ordinance. No such district shall contain less than 600 acres of surface area.

Sec. 2. (a) The board of commissioners of a county may adopt an ordinance to apply only in a special district created under this act, which requires that no owner or keeper of any dog shall permit such dog to run at large. For the purpose of that ordinance, the following definitions apply:

- (1) "Owner or keeper" means any person or persons, or firm, association or corporation, owning, keeping, or harboring a dog;
- (2) "At large" is intended to mean off the premises of the owner or keeper and not under restraint;
- (3) "Under restraint" means:
 - a. Controlled by means of a chain, leash or other like device;
 - b. On or within a vehicle being driven or parked; or
 - c. Within a secure enclosure which prevents the dog from injuring persons; and
- (4) "Premises" means land and buildings.

(b) The ordinance may be enforced as provided for county ordinances under Chapters 67 or 153A of the General Statutes, or under any other public or local act applicable in that county.

Sec. 2.1. Notwithstanding Sections 1 and 2 of this act, a county board of commissioners may, not earlier than adoption of the resolution calling an election as provided by this act, adopt an ordinance authorized by this act, applicable only in the territory of the proposed district, with funds for enforcement of such ordinance to be paid out of general county revenues, but if the voters do not approve creation of the district as provided by this act, then the ordinance shall cease to be effective (except for violations committed prior to its expiration) at the end of the fiscal year ending after the next general county election held after adoption of the ordinance.

Sec. 3. The board of county commissioners of a county may by resolution call an election to be conducted by the board of elections of that county in a special district established under Section 1 of this act for the purpose of submitting to the voters therein the single issue of

establishing the district and levying and collecting annually a special ad valorem tax on all taxable real and personal property in the special district for the purpose of enforcing an ordinance authorized by Section 2 of this act. The tax levied and collected for the purpose herein specified shall not exceed five cents (5¢) on each one hundred dollars (\$100.00) valuation of taxable property in the special district.

Sec. 4. The election shall be conducted in accordance with Chapter 163 of the General Statutes. The board of elections of a county shall determine and declare the results of said election and certify the same to the board of county commissioners of a county and the same shall thereupon be spread upon the minutes of the said board.

Sec. 5. The ballot shall contain the date of the election, the name of the proposed special district, and the following language:

"☐ FOR creation of the _____ District and the levy of an ad valorem tax not to exceed five cents (5¢) on the one hundred dollar (\$100.00) taxable valuation for the enforcement within that district of an ordinance requiring that no owner or keeper of any dog shall permit such dog to run at large.

☐ AGAINST creation of the _____ District and the levy of an ad valorem tax not to exceed five cents (5¢) on the one hundred dollar (\$100.00) taxable valuation for the enforcement within that district of an ordinance requiring that no owner or keeper of any dog shall permit such dog to run at large."

The ballot shall contain the facsimile signature of the chairman of the board of elections of that county.

Sec. 6. If a majority of the qualified voters voting at said election shall vote in favor of creating the district and the levying of a tax as aforesaid for the enforcement of the ordinance, as provided by this act, the board of county commissioners of that county shall upon receipt of the certified copy of the results of said election from the board of elections adopt a resolution creating the district and shall file a copy of the said resolution so adopted with the clerk of the superior court of the county. Upon creation and establishment of the district, the board of county commissioners of the county may levy and collect an ad valorem tax on all taxable property in said district in such amount as it may deem necessary to pay expenses necessitated under Section 8 of this act, not exceeding five cents (5¢) on each one hundred dollar (\$100.00) taxable valuation of property in said district from year to year, and shall cause the same to be kept in a separate and special fund, to be used only for the enforcement within that district of the ordinance authorized by Section 2 of this act.

Sec. 7. The district shall constitute a political subdivision of the State of North Carolina, and shall be a body corporate and politic, exercising public power. The special district is a public authority under the Local Government Budget and Fiscal Control Act, but the audit required under G.S. 159-34 may be done as part of the audit of the county which established the special district, and the finance officer of that county shall be ex officio the finance officer of the special district. The board of commissioners of that county shall be ex officio the governing board of the special district.

Sec. 8. (a) The special district shall pay for the enforcement of the ordinance adopted under Section 2 of this act within that district. The special district may contract with the county for the enforcement of that ordinance.

(b) The district may:

- (1) Sell, convey, and dispose of any real or personal property owned by the special district, acquired from any source whatsoever, in accordance with Article 12 of Chapter 160A of the General Statutes.
- (2) Erect, repair, construct, replace, and alter buildings owned by the special district, and to improve, manage and maintain and control all real and personal property owned by the special district or under its supervision and control.
- (3) Employ such officers, agents, consultants, and other employees as it may desire, and to determine their qualifications, duties and compensation.
- (4) Expend the funds collected by the special tax provided by this act and any and all other funds coming into the hands of the special district thereof by gift, donation, contribution, or otherwise, for the enforcement of the ordinance adopted under Section 2 of this act.
- (5) Do any and all other acts and things reasonably necessary and requisite to the purpose of the special district in accordance with the provisions of this act.

Sec. 9. This act applies to Dare County only, and is supplemental to any private or public acts.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

H.B. 2331

CHAPTER 964

AN ACT TO INCREASE THE ANNUAL FEE PAID BY PERSONS
LICENSED TO CONSTRUCT AND PERSONS WHO OPERATE
NUCLEAR FACILITIES TO THE DEPARTMENT OF

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES
FOR PLANNING AND IMPLEMENTING EMERGENCY
RESPONSE ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 166A-6.1(b) reads as rewritten:

"(b) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the ~~State of North Carolina for use of the Department of Environment, Health, and Natural Resources~~ General Fund an annual fee of ~~no more than twelve~~ eighteen thousand dollars (\$12,000) (\$18,000) for each fixed nuclear facility which is located within this State or has a Plume Exposure Pathway Emergency Planning Zone of which any part is located within this State. This fee ~~is to be used~~ shall be appropriated by the General Assembly and may be used to assist in or partially defray such costs of planning and implementing emergency response activities as are required by the Federal Emergency Management Agency for the operation of nuclear facilities. Said fee is to be paid no later than July 31 of each year. ~~The amount of the fee for use by the Department of Environment, Health, and Natural Resources shall be determined by such Department.~~ The fee will be referred to the Department of Crime Control and Public Safety for collection."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

H.B. 2338

CHAPTER 965

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA AND THE UNIVERSITY OF NORTH CAROLINA HOSPITALS AT CHAPEL HILL.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is to authorize construction, by certain constituent institutions of The University of North Carolina and The University of North Carolina Hospitals at Chapel Hill, of the capital improvements projects listed herein for each institution, and to authorize the financing of these said capital improvements projects with funds available to the institutions and the Hospitals from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any

combination of such funds, but not including funds appropriated from the General Fund of the State.

Sec. 2. The projects hereby authorized to be constructed and financed as provided in Section 1 of this act are as follows:

1. Appalachian State University
Addition to Plemmons Student Union Building \$ 9,085,700
2. East Carolina University
College Hill Dining Facility 4,081,800
Student Recreation Center 17,976,200
Renovate Slay and Umstead Dormitories 6,092,900
3. The University of North Carolina at Chapel Hill
Renovation of Old East and Old West
Residence Halls 4,098,100
Student Recreation Center 4,945,700
Office Building 4,864,100
Storage Facility 2,323,500
4. Western Carolina University
Renovate Reynolds Residence Hall 2,158,700
5. The University of North Carolina Hospitals at
Chapel Hill Neuropsychiatric Hospital 43,215,000.

Sec. 3. The Director of the Budget, provided the Director of the Budget may consult with the Advisory Budget Commission, may, when in his opinion it is in the best interest of the State to do so, and upon the request of The University of North Carolina Board of Governors, authorize a decrease in the scope or a change in the method of funding of any project authorized by this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

H.B. 2350

CHAPTER 966

AN ACT TO CONFORM THE SOCIAL SERVICES STATUTES WITH THE FEDERAL JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM AND TO PRESERVE STATE FUNDS.

Whereas, The Job Opportunities and Basic Skills Training Program (JOBS) was established by the federal Family Support Act of 1988, and

Whereas, JOBS is a comprehensive education and training program designed to replace the Work Incentive Program and the Community Work Experience Program and expands opportunities for

recipients of Aid to Families with Dependent Children to become independent; and

Whereas, JOBS is effective October 1, 1990; and

Whereas, State funds have been appropriated to begin the implementation of JOBS effective October 1, 1990; and

Whereas, the old programs that JOBS is designed to replace need to be removed from the General Statutes prior to October 1, 1990, to preserve the State funding and to effect the federal legislation; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-29 reads as rewritten:

" § 108A-29. *Limitations on eligibility.*

(a) The Social Services Commission shall adopt such administrative rules concerning work requirements as conditions of eligibility for Aid to Families with Dependent Children in order to be in compliance with federal regulations, but such rules shall not be more restrictive than the work requirements applicable to the work incentive program Job Opportunities and Basic Skills Training Program provided for in G.S. 108A-30.

(b) Members of families with dependent children and with aggregate family income at or below the level required for eligibility for Aid to Families with Dependent Children assistance, regardless of whether or not they have applied for such assistance, shall be given priority in obtaining manpower services including training and public service employment provided by or through State agencies or with funds which are allocated to the State of North Carolina directly or indirectly through prime sponsors or otherwise for the purpose of employment of unemployed persons.

~~(c) The Social Services Commission shall adopt rules imposing work requirements under the Community Work Experience Program demonstration project, in accordance with federal laws and regulations, as a condition for eligibility for Aid to Families with Dependent Children."~~

Sec. 2. G.S. 108A-30 reads as rewritten:

" § 108A-30. ~~Work incentive program adopted; Job Opportunities and Basic Skills Training Program adopted~~ evidence of refusal to participate in special work projects; protective and vendor payments.

(a) The provisions of ~~Part C of Title IV~~ Title IV A and Title IV F of the Federal Social Security Act pertaining to the ~~work incentive program~~ Job Opportunities and Basic Skills Training Program for recipients of aid to families with dependent children assistance, and the benefits thereunder, are hereby accepted and adopted.

~~(b) The work incentive program provided for by this section is a part of, and subject to all the same provisions of law as, the aid to families with dependent children program provided for in this Article; except that in the case of inconsistent provisions, the provisions of this section shall be deemed exceptions to other provisions of law in this Article.~~

~~(c) Written notice of a finding by the United States Secretary of Labor, or the United States Department of Labor, the Employment Security Commission, or other authorized agent of the Secretary of Labor as to whether a person has refused without good cause to accept employment or participate in a project shall be binding upon the State and its agencies and the political subdivisions of the State. Any other provision of law to the contrary notwithstanding, the original or copy of such a notice bearing the certification of a State or county agency that is the original or true copy of the original in or from the records of the agency shall be admissible in evidence without the appearance of a witness, and it shall be prima facie evidence that it was duly received by the agency from the Secretary of Labor or his authorized agent.~~

~~(d) Protective and vendor payments required to be made under the work incentive program shall be made in accordance with federal rules and regulations and the rules and regulations of the Social Services Commission."~~

Sec. 3. G.S. 108A-39.2 is repealed.

Sec. 4. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

H.B. 2356

CHAPTER 967

AN ACT TO AMEND THE AUTHORIZATION FOR A WHOLLY SELF-LIQUIDATING PROJECT FOR THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO THAT WAS ORIGINALLY ENACTED BY CHAPTER 806 OF THE 1987 SESSION LAWS AND WAS AMENDED BY CHAPTER 995 OF THE 1987 SESSION LAWS.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is to amend Section 2 of the 1987 Session Laws, Chapter 806, previously amended by the 1987 (Second Session) Session Laws, Chapter 995 for the University of North Carolina at Greensboro, by increasing the amount authorized for the Student Recreation Facilities from ten million four hundred twenty-eight thousand nine hundred dollars (\$10,428,900) to eleven

million five hundred eighteen thousand five hundred dollars (\$11,518,500) on a wholly self-liquidating basis.

Sec. 2. Section 2 of Chapter 995 of the 1987 Session Laws under the institutional subheading as indicated, and affecting only the project listed in this act, is amended to read as follows:

4. The University of North Carolina at Greensboro

b. Student Recreation Facilities, \$11,518,500.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1990.

S.B. 673

CHAPTER 968

AN ACT TO MAKE CHANGES IN THE PRACTICE OF FUNERAL SERVICE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.28 reads as rewritten:

" § 90-210.28. Fees.

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit		
Application	\$200.00	\$250.00
Annual renewal	100.00	175.00
Late renewal penalty	75.00	100.00
<u>Establishment reinspection fee</u>	<u>100.00</u>	
Courtesy card		
Application	75.00	
Annual renewal	50.00	
Out-of-state licensee		
Application	150.00	200.00
Embalmer, funeral director,		
funeral service		
Application--North		
Carolina-Resident	100.00	150.00
-Non-Resident	200.00	
Annual Renewal-embalmer or		
funeral director	50.00	
-funeral service	100.00	
Reinstatement fee	50.00	
Resident trainee permit		
Application	50.00	
Annual renewal	35.00	
Late renewal penalty	25.00	

Duplicate license certificate	25.00
Chapel registration	
Application	150.00
Annual renewal	100.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Mortuary Science to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.B. 1340

CHAPTER 969

AN ACT TO PROVIDE FOR THE ELECTION OF THE BOARD OF COMMISSIONERS OF SAMPSON COUNTY, TO REFLECT THE SYSTEM ADOPTED UNDER A CONSENT DECREE IN THE CASE OF UNITED STATES OF AMERICA V. SAMPSON COUNTY BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. The Board of County Commissioners of Sampson County shall consist of five members. Sampson County is divided into five districts as set out in Section 3 of this act. The qualified voters of each district shall nominate candidates and elect a member who resides in that district for the seat apportioned to that district. The primary and election shall be held and conducted in accordance with the general election laws of this State except as otherwise provided herein.

Sec. 2. (a) The terms of office of all the members of the Sampson County Board of Commissioners shall expire on the first Monday in December of 1990.

(b) In 1990 and quadrennially thereafter, members shall be elected from Districts 1, 3, and 5 for four-year terms. In 1990, members shall be elected from Districts 2 and 4 for two-year terms. In 1992 and quadrennially thereafter, members shall be elected from Districts 2 and 4 for four-year terms.

Sec. 3. Sampson County is divided into five districts for the purposes of this act, as follows:

(1) *DISTRICT NO. 1:* BEGINNING at a point in the line of Sampson County and Wayne County, said point being where the

centerline of N.C. Highway 55 and N.C. Highway 50 intersects with the Sampson County and Wayne County line and runs in a Southerly direction to a point where N.C. Highway 50 intersects with State Road No. 1722 and State Road No. 1721; thence with the centerline of N.C. Highway 50 in a Easterly and Southeasterly direction to a point where the centerline of N.C. Highway 50 intersects with the centerline of State Road No. 1729; thence with the centerline of State Road No. 1729 in a Southeasterly, Westerly, and Northwesterly direction to a point where the centerline State Road No. 1729 intersects with the centerline of State Road No. 1725; thence with the centerline of State Road No. 1725 in a Northerly direction to a point where State Road No. 1725 intersects with the centerline of State Road No. 1730; thence with the centerline of State Road No. 1730 in a Westerly direction to a point where State Road No. 1730 intersects with the centerline of State Road No. 1731; thence with the centerline of State Road No. 1731 in a Westerly direction to a point where State Road No. 1731 intersects with the centerline of State Road No. 1722; thence with the centerline of State Road No. 1722 in a Westerly direction to a point where State Road No. 1722 intersects with the centerline of State Road No. 1711; thence with the centerline of State Road No. 1711 in a Northerly direction to a point where State Road No. 1711 intersects with the centerline of State Road No. 1715; thence with the centerline of State Road No. 1715 in a Westerly direction to a point where State Road No. 1715 intersects with the centerline of State Road No. 1714; thence with the centerline of State Road No. 1714 in a Southerly direction to a point where State Road No. 1714 intersects with the centerline of State Road No. 1843 and U.S. Highway 701; thence with the centerline of State Road No. 1843 in a Westerly direction to a point where State Road No. 1843 intersects with the centerline of State Road No. 1802; thence with the centerline of State Road No. 1802 in a Northerly direction to a point where State Road No. 1802 intersects with the centerline of State Road No. 1845; thence with the centerline of State Road No. 1845 in a Westerly direction to a point where the centerline of State Road No. 1845 intersects with the centerline of Beaver Dam Creek; thence with the centerline of Beaver Dam Creek in a Southerly direction to a point where the centerline of Beaver Dam Creek intersects with the centerline of State Road No. 1636; thence with the centerline of State Road No. 1636 in a Easterly direction to a point where the centerline of State Road No. 1636 intersects with the centerline of State Road No. 1817; thence with the centerline of State Road No. 1817 in a Southerly direction to a point where the centerline of State Road No. 1817 intersects with the centerline of Ward Swamp; thence with the centerline of Ward Swamp in a Easterly direction to a point where the

centerline of Ward Swamp intersects with the centerline of U.S. Highway 701; thence with the centerline of U.S. Highway 701 in a Southerly direction to a point where the centerline of U.S. Highway 701 intersects with the centerline of State Road No. 1818; thence with the centerline of State Road No. 1818 in a Westerly direction to a point where the centerline of State Road No. 1818 intersects with the centerline of State Road No. 1817; thence with the centerline of State Road No. 1817 in a Southerly direction to a point where the centerline of State Road No. 1817 intersects with the centerline of State Road No. 1819; thence with the centerline of State Road No. 1819 in a Westerly direction to a point where State Road No. 1819 intersects with the centerline of State Road No. 1746; thence with the centerline of State Road No. 1746 in a Northwesterly direction to a point where State Road No. 1746 intersects with the centerline of State Road No. 1703; thence with the centerline of State Road No. 1703 in a Southerly direction to a point where State Road No. 1703 intersects with the centerline of U.S. Highway 421; thence with the centerline of U.S. Highway 421 in a Northwesterly direction to a point where the centerline of U.S. Highway 421 intersects with the centerline of State Road No. 1338; thence with the centerline of State Road No. 1338 in a Westerly direction to a point where the centerline of State Road No. 1338 intersects with the centerline of State Road No. 1336; thence with the centerline of State Road No. 1336 in a Northerly direction to a point where the centerline of State Road No. 1336 intersects with the centerline of U.S. Highway 421; thence with the centerline of U.S. Highway 421 in a Northwesterly direction to a point where U.S. Highway 421 intersects with the center of Coharie Creek; thence with the center of Coharie Creek in a Westerly direction to a point where Coharie Creek is intersected by State Road No. 1006; thence with the centerline of State Road No. 1006 in a Westerly direction to a point where State Road No. 1006 intersects with the centerline of State Road No. 1430; thence with the centerline of State Road No. 1430 in a Southerly direction to a point where State Road No. 1430 intersects with the centerline of State Road No. 1428; thence with the centerline of State Road No. 1428 in a Westerly direction to a point where State Road No. 1428 intersects with the centerline of State Road No. 1421; thence with the centerline of State Road No. 1421 in a Southerly direction to a point where State Road No. 1421 intersects with the centerline of State Road No. 1414; thence with the centerline of State Road No. 1414 in a Southwesterly direction to a point where State Road No. 1414 intersects with the Northern Town Limits of the Town of Autryville (as existed on the 1980 Census Map); thence in a Westerly direction along the Town of Autryville Limits Line (as existed on the 1980 Census Map) to the center of South River, the

Cumberland County and Sampson County line; thence in a North and Northeast direction with the center of South River, the Cumberland County and Sampson County line, to the point where Cumberland County, Sampson County and Harnett County intersects or joins each other; thence in a Northeasterly direction where the Sampson County and Harnett County line join and up Mingo Swamp to a point where Mingo Swamp is intersected with the Johnston County and Sampson County line; thence in a Southerly, Southeasterly and Easterly direction, the Sampson County and Johnston County line, to the Johnston County, Wayne County and Sampson County line join each other; thence in a Southeasterly direction with the Sampson County and Wayne County lines to a point where said line is intersected with the centerline of N.C. Highway 55 and N.C. Highway 50, the beginning.

(2) *DISTRICT NO. 2: BEGINNING* at a point in the center of South River, said point being where the Northwest corner of the Autryville Town Limits (as existed on the 1980 Census Map) is located in the Cumberland County and Sampson County boundary line and runs in a Easterly direction with the Town Limits of Autryville to the point where the Town Limits of Autryville is intersected with State Road No. 1414; thence with the centerline of State Road No. 1414 in a Northeasterly direction to a point where the centerline of State Road No. 1414 intersects with the centerline of State Road No. 1421; thence with the centerline of State Road No. 1421 in a Northerly direction to a point where the centerline of State Road No. 1421 intersects with the centerline of State Road No. 1428; thence with the centerline of State Road No. 1428 in a Easterly direction to a point where the centerline of State Road No. 1428 intersects with the centerline of State Road No. 1430; thence with the centerline of State Road No. 1430 in a Northerly direction to a point where the centerline of State Road No. 1430 intersects with the centerline of State Road No. 1006; thence with the centerline of State Road No. 1006 in an Easterly direction to a point where the centerline of State Road No. 1006 intersects with the centerline of Coharie Creek; thence with the centerline of Coharie Creek in a Northeasterly direction to a point where the centerline of Coharie Creek intersects with the centerline of U.S. Highway 421; thence with the centerline of U.S. Highway 421 in a Southeasterly direction to a point where the centerline of U.S. Highway 421 intersects with the centerline of State Road No. 1336; thence with the centerline of State Road No. 1336 in a Southerly direction to a point where the centerline of State Road No. 1336 intersects with the centerline of State Road No. 1338; thence with the centerline of State Road 1338 in an Easterly direction to a point where State Road 1338 intersects with the centerline of U.S.

Highway 421; thence with the centerline of U.S. Highway 421 in a Southeasterly direction to a point where the centerline of U.S. Highway 421 intersects with the centerline of State Road No. 1703; thence with the centerline of State Road No. 1703 in a Northeasterly direction to a point where the centerline of State Road No. 1703 intersects with the centerline of State Road No. 1746; thence with the centerline of State Road No. 1746 in a Easterly direction to a point where the centerline of State Road No. 1746 intersects with the centerline of State Road No. 1819; thence with the centerline of State Road No. 1819 in a Easterly direction to a point where the centerline of State Road No. 1819 intersects with the centerline of State Road No. 1817; thence with the centerline of State Road No. 1817 in a Northerly direction to a point where the centerline of State Road No. 1817 intersects with the centerline of State Road No. 1818; thence with the centerline of State Road No. 1818 in a Easterly direction to a point where the centerline of State Road No. 1818 intersects with the centerline of U.S. Highway 701; thence with the centerline of U.S. Highway 701 in a Southerly direction to a point where U.S. Highway 701 intersects the centerline of State Road No. 1743; thence with the centerline of State Road No. 1743 in an Easterly and Northerly direction to a point where State Road No. 1743 intersects with the centerline of State Road No. 1739; thence with the centerline of State Road No. 1739 in a Northerly direction to a point where State Road No. 1739 intersects with the centerline of State Road No. 1744, 1741 and 1738; thence with the centerline of State Road No. 1738 in a Northeasterly direction to a point where State Road No. 1738 intersects with the centerline of State Road No. 1740; thence with the centerline of State Road No. 1740 in a Southerly direction to a point where State Road No. 1740 intersects with the centerline of N.C. Highway 403; thence with the centerline of N.C. Highway 403 in a Westerly direction to a point where N.C. Highway 403 crosses Six Runs Creek; thence with the center of Six Runs Creek in a Southerly direction to a point where Six Runs Creek intersects with the centerline of State Road No. 1904; thence with the centerline of State Road No. 1904 in a Westerly direction to a point where State Road No. 1904 intersects with the centerline of N.C. Highway 403; thence with the centerline of N.C. Highway 403 in a Northeasterly direction to a point where N.C. Highway 403 intersects with the centerline of State Road No. 1748; thence with the centerline of State Road No. 1748 in a Westerly direction to a point where State Road No. 1748 intersects with the centerline of U.S. Highway 701; thence with the centerline of U.S. Highway 701 in a Southerly direction to a point where U.S. Highway 701 intersects with the centerline of State Road No. 1751; thence with the centerline of State Road No. 1751 to a

point where State Road No. 1751 intersects with the centerline of State Road No. 1749; thence with the centerline of State Road No. 1749 in a Southerly direction to a point where State Road No. 1749 intersects with the City Limits Line of the City of Clinton (as existed on the 1980 Census Map); thence with the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) in an Easterly and Southerly direction to a point where the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) intersects with the centerline of N.C. Highway 403 (College Street extended); thence with the centerline of College Street in a Westerly direction to a point where College Street intersects with the centerline of Warsaw Road; thence with the centerline of Warsaw Road in a Southeasterly direction to a point where Warsaw Road intersects with the centerline of Lafayette Street; thence with the centerline of Lafayette Street in a Northeasterly direction to a point where Lafayette Street intersects with the centerline of Powell Street; thence with the centerline of Powell Street in a Southeasterly and Southwesterly direction to a point where Powell Street intersects with the centerline of Warsaw Road; thence with the centerline of Warsaw Road in a Southeasterly direction to a point where Warsaw Road intersects with the centerline of Morissey Blvd.; thence with the centerline of Morissey Blvd. in a Southwesterly direction to a point where Morissey Blvd. intersects with the centerline of Devane Street; thence with the centerline of Devane Street in a Northwesterly direction to a point where Devane Street intersects with the centerline of College Street; thence with the centerline of College Street in a Southwesterly direction to a point where the centerline of College Street intersects with the centerline of Sampson Street; thence with the centerline of Sampson Street in a Northwesterly direction to a point of 160 feet beyond the point where the centerline of Sampson Street intersects with the centerline of E. Johnston Street; thence North 49 degrees East to a point in the L.C. Parker Subdivision according to Plat recorded in Map Book 3, Page 23, Sampson County Registry; thence North 41 degrees 30 minutes West 557 feet, more or less, to a point in the line of Lot 5 of the L.C. Parker Subdivision; thence South 48 degrees 30 minutes West 70 feet to a point; thence North 41 degrees 30 minutes West 382 feet to a point; thence North 49 degrees 10 minutes East 189 feet to a point; thence North 38 degrees 50 minutes West 194 1/2 feet to a point; thence North 38 degrees East 350 feet to a point in the center of Cat Tail Branch; thence up the run of Cat Tail Branch in a Northerly direction to a point where Cat Tail Branch intersects with the centerline of Blount Street; thence with the centerline of Blount Street in a Northeasterly direction to a point where the centerline of Blount Street intersects with the centerline of Beaman Street; thence with the centerline of

Beaman Street in a Northerly direction to a point where the centerline Beaman Street intersects with the centerline of Beaver Dam Branch; thence with the centerline of Beaver Dam Branch, then Williams Mill Branch and the City Limits Line of the City of Clinton (as existed on 1980 Census Map) in a Westerly direction to a point where the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) intersects with the centerline of the media of U.S. Highway 701 Bypass; thence with the centerline of the media of U.S. Highway 701 Bypass in a Northerly direction to a point where the centerline of the media of U.S. Highway 701 Bypass intersects with the centerline of North Blvd.; thence with the centerline of North Blvd. and the centerline of State Road No. 1311 in a Northwesterly direction to a point where the centerline of State Road No. 1311 intersects with the centerline of State Road No. 1323; thence with the centerline of State Road No. 1323 in a Westerly direction to a point where the centerline of State Road No. 1323 intersects with the centerline of State Road No. 1326; thence with the centerline of State Road No. 1326 in a Westerly direction to a point where the centerline of State Road No. 1326 intersects with the centerline of State Road No. 1414; thence with the centerline of State Road No. 1414 in a Westerly direction to a point where the centerline of State Road No. 1414 intersects with the centerline of State Road No. 1002; thence with the centerline of State Road No. 1002 in a Southerly direction to a point where the centerline of State Road No. 1002 intersects with the centerline of State Road 1233; thence with the centerline of State Road No. 1233 in a Westerly direction to a point where the centerline of State Road No. 1233 intersects with the centerline of Cathead Swamp; thence with the centerline of Cathead Swamp in a Southeasterly direction to a point where the centerline of Cathead Swamp intersects with the centerline of Big Swamp; thence with the centerline of Big Swamp in a Southeasterly direction to a point where Big Swamp intersects with the centerline of State Road No. 1256; thence with the centerline of State Road No. 1256 in a Southwesterly direction to a point where the centerline of State Road No. 1256 intersects with the centerline of N.C. Highway 24; thence with the centerline of N.C. Highway 24 in a Northwesterly direction to a point where N.C. Highway 24 intersects with the centerline of the Town of Autryville Limits Line (as existed on the 1980 Census Map); thence with the centerline of the Town of Autryville Limits Line (as existed on the 1980 Census Map) in a Southeasterly direction to a point where the Town of Autryville Limits Line intersects with the center of South River, the Cumberland County and Sampson County line; thence with the center of South River in a Northerly direction with the Cumberland County, Sampson County, and Town of Autryville Limits Line to a point where the Northwest

corner of the Town of Autryville Limits Line intersects with South River, the beginning.

(3) *DISTRICT NO. 3*: BEGINNING at a point in the Sampson County and Duplin County line where Stewart Creek intersects with the Sampson County and Duplin County line and runs with the centerline of Stewart Creek in a Westerly direction to a point where Stewart Creek intersects with the centerline of Six Runs Creek; thence with the centerline of Six Runs Creek in a Northerly direction to a point where the centerline of Six Runs Creek intersects with the centerline of State Road No. 1004; thence with the centerline of State Road No. 1004 in a Westerly direction to a point where the centerline of State Road No. 1004 intersects with the centerline of State Road No. 1932; thence with the centerline of State Road No. 1932 in a Northwesterly direction to a point where the centerline of State Road No. 1932 intersects with the centerline of State Road No. 1933; thence with the centerline of State Road No. 1933 in a Northerly direction to a point where the centerline of State Road No. 1933 intersects with the centerline of State Road No. 1924; thence with the centerline of State Road No. 1924 in a Westerly direction to a point where the centerline of State Road No. 1924 intersects with the centerline of Southeast Blvd.; thence with the centerline of Southeast Blvd. in a Northerly direction to a point where Southeast Blvd. intersects with the centerline of Southwest Blvd.; thence with the centerline of Southwest Blvd. in a Northwesterly direction to a point where Southwest Blvd. intersects with the centerline of the City of Clinton Limits Line (as existed on the 1980 Census Map); thence with the centerline of the City of Clinton Limits Line (as existed on the 1980 Census Map) in a Southerly and Westerly direction to a point where the centerline of the City of Clinton Limits Line (as existed on the 1980 Census Map) intersects with the centerline of the media of U.S. Highway 421 and 701 Bypass; thence with the centerline of the media of U.S. Highway 421 and 701 Bypass in a Northwesterly direction to a point where the centerline of said Bypass intersects with the centerline of Elizabeth Street; thence with the centerline of Elizabeth Street in a Northeasterly direction to a point where the centerline of Elizabeth Street intersects with the centerline of Morissey Blvd.; thence with the centerline of Morissey Blvd. in a Easterly and Northeasterly direction to a point where the centerline of Morissey Blvd. intersects with the centerline of Ferrell Street; thence with the centerline of Ferrell Street in a Northwesterly direction to a point where the centerline of Ferrell Street intersects with the centerline of John Street; thence with the centerline of John Street in a Northeasterly direction to a point where the centerline of John Street intersects with the centerline of Lisbon Street; thence with the

centerline of Lisbon Street in a Northwesterly direction to a point where the centerline of Lisbon Street intersects with the centerline of Main Street; thence with the centerline of Main Street in a Southwesterly direction to a point where the centerline of Main Street intersects with the centerline of Wall Street; thence with the centerline of Wall Street in a Northwesterly direction to a point where the centerline of Wall Street intersects with the centerline of McKoy Street; thence with the centerline of McKoy Street in a Northwesterly direction to a point where the centerline of McKoy Street intersects with the centerline of W. Johnston Street; thence with the centerline of W. Johnston Street in a Southwesterly direction to a point where the centerline of W. Johnston Street intersects with the centerline of Williams Street; thence with the centerline of Williams Street in a Southerly direction to a point where the centerline of Williams Street intersects with the centerline of Fayetteville Street; thence with the centerline of Fayetteville Street in a Northwesterly direction to a point where the centerline of Fayetteville Street intersects with the centerline of Forrest Trail; thence with the centerline of Forrest Trail and beyond to a point, if extended, where the centerline of Forrest Trail intersects with the centerline of the media of U.S. Highway 421 and 701 Bypass; thence with the centerline of the media of U.S. Highway 421 and 701 Bypass in a Southeasterly direction to a point where the centerline of the media of U.S. Highway 421 and 701 Bypass intersects with the centerline of Polly Street, if extended; thence with the centerline of Polly Street and the extension back to the centerline of U.S. Highway 421 and 701 Bypass in a Southerly direction to a point where the centerline of Polly Street intersects with the centerline of Davis Street; thence with the centerline of Davis Street in a Southeasterly direction to a point where the centerline of Davis Street intersects with the centerline of Elizabeth Street; thence with the centerline of Elizabeth Street in a Southwesterly direction to a point where the centerline of Elizabeth Street intersects with the centerline of the City Limits Line of the City of Clinton (as existed on the 1980 Census Map); thence with the centerline of the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) in a Northwesterly direction to a point where the centerline of the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) intersects with the centerline of N.C. Highway 24 (Sunset Avenue); thence with the centerline of N.C. Highway 24 (Sunset Avenue) in a Northeasterly direction to a point where the centerline of N.C. Highway 24 (Sunset Avenue) intersects with the centerline of Shields Street; thence with the centerline of Shields Street in a Northwesterly direction to a point where the centerline of Shields Street intersects with the centerline of Naylor's Street; thence with the

centerline of Naylor's Street in a Northeasterly direction to a point where the centerline of Naylor's Street intersects with the centerline of Oakland Blvd.; thence with the centerline of Oakland Blvd. in a Northerly direction to a point where the centerline of Oakland Blvd. intersects with the centerline of Melson Street; thence with the centerline of Melson Street in a Southwesterly direction to a point where the centerline of Melson Street intersects with the centerline of Royal Lane; thence with the centerline of Royal Lane in a Northwesterly direction to a point where the centerline of Royal Lane intersects with the City Limits Line of the City of Clinton (as existed on the 1980 Census Map); thence with the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) in a Northeasterly, Southeasterly, Northerly, and Northeasterly direction to a point where the centerline of the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) intersects with the centerline of U.S. Highway 701 Bypass media; thence with the centerline of U.S. Highway 701 Bypass media in a Northerly direction to a point where the centerline of U.S. Highway 701 Bypass media intersects with the centerline of North Blvd.; thence with the centerline of North Blvd. and the centerline of State Road No. 1311 in a Northwesterly direction to a point where the centerline of State Road No. 1311 intersects with the centerline of State Road No. 1323; thence with the centerline of State Road No. 1323 in a Westerly direction to a point where the centerline of State Road No. 1323 intersects with the centerline of State Road No. 1326; thence with the centerline of State Road No. 1326 in a Westerly direction to a point where the centerline of State Road No. 1326 intersects with the centerline of State Road No. 1414; thence with the centerline of State Road No. 1414 in a Westerly direction to a point where the centerline of State Road No. 1414 intersects with the centerline of State Road No. 1002; thence with the centerline of State Road No. 1002 in a Southerly direction to a point where the centerline of State Road No. 1002 intersects with the centerline of State Road 1233; thence with the centerline of State Road No. 1233 in a Westerly direction to a point where the centerline of State Road No. 1233 intersects with the centerline of Cathead Swamp; thence with the centerline of Cathead Swamp in a Southeasterly direction to a point where the centerline of Cathead Swamp intersects with the centerline of Big Swamp; thence with the centerline of Big Swamp in a Southeasterly direction to a point where Big Swamp intersects with the centerline of State Road No. 1256; thence with the centerline of State Road No. 1256 in a Southwesterly direction to a point where the centerline of State Road No. 1256 intersects with the centerline of N.C. Highway 24; thence with the centerline of N.C. Highway 24 in a Northwesterly direction

to a point where N.C. Highway 24 intersects with the centerline of the Town of Autryville Limits Line (as existed on the 1980 Census Map); thence with the centerline of the Town of Autryville Limits Line (as existed on the 1980 Census Map) in a Southeasterly direction to a point where the Town of Autryville Limits Line intersects with the center of South River, the Cumberland County and Sampson County line; thence with the centerline of South River, the Cumberland County and Sampson County line, in a Southerly direction to a point where the centerline of South River intersects with the centerline of N.C. Highway 242; thence with the centerline of N.C. Highway 242 in a Northeasterly direction to a point where the centerline of N.C. Highway 242 intersects with the centerline of State Road No. 1253; thence with the centerline of State Road No. 1253 in a Northerly direction to a point where the centerline of State Road No. 1253 intersects with the centerline of State Road No. 1246; thence with the centerline of State Road No. 1246 in a Northeasterly direction to a point where the centerline of State Road No. 1246 intersects with the centerline of State Road No. 1247; thence with the centerline of State Road No. 1247 in a Westerly direction to a point where the centerline of State Road No. 1247 intersects with the centerline of State Road No. 1254; thence with the centerline of State Road No. 1254 in a Northerly direction to a point where the centerline of State Road No. 1254 intersects with the centerline of N.C. Highway 24; thence with the centerline of N.C. Highway 24 in a Southeasterly direction to a point where the centerline of N.C. Highway 24 intersects with the centerline of State Road No. 1403; thence with the centerline of State Road No. 1403 in a Northerly direction to a point where the centerline of State Road No. 1403 intersects with the centerline of State Road No. 1405; thence with the centerline of State Road No. 1405 in a Easterly direction to a point where the centerline of State Road No. 1405 intersects with the centerline of State Road No. 1402; thence with the centerline of State Road No. 1402 in a Southerly direction to a point where the centerline of State Road No. 1402 intersects with the centerline of State Road No. 1401; thence with the centerline of State Road No. 1401 in a Northerly and Northeasterly direction to a point where the centerline of State Road No. 1401 intersects with the centerline of State Road No. 1002; thence with the centerline of State Road No. 1002 in a Southerly direction to a point where the centerline of State Road No. 1002 intersects with the Western right-of-way line of N.C. Highway 242; thence with the Western edge of the right-of-way line of N.C. Highway 242 in a Southerly direction to a point where the Western edge of the right-of-way line of N.C. Highway 242 intersects with the centerline of the Town Limits Line of the Town of Roseboro (as existed on the 1980

Census Map); in a Westerly direction to a point where the Town Limits Line of the Town of Roseboro (as existed on the 1980 Census Map) intersects with the centerline of the Atlantic Coastline Railroad Bed; thence with the centerline of the Atlantic Coastline Railroad Bed in a Southeasterly direction to a point where the Atlantic Coastline Railroad Bed intersects with the centerline of Broad Street; thence with the centerline of Broad Street in a Southerly direction to a point where the centerline of Broad Street intersects with the centerline of McPherson Street; thence with the centerline of McPherson Street in a Southwesterly direction to a point where the centerline of McPherson Street intersects with the centerline of Vance Street; thence with the centerline of Vance Street in a Southeasterly direction to a point where the centerline of Vance Street intersects with the centerline of Clinton Street; thence with the centerline of Clinton Street in a Southwesterly direction to a point where the centerline of Clinton Street intersects with the centerline of Charles Street; thence with the centerline of Charles Street in a Northerly direction to a point where the centerline of Charles Street intersects with the Town Limits Line of the Town of Roseboro (as existed on the 1980 Census Map); thence with the centerline of the Town Limits Line of the Town of Roseboro (as existed on the 1980 Census Map) in a Southerly direction and then with the City Limits Line in a Easterly direction to a point where the Town of Roseboro Limits Line (as existed on 1980 Census Map) intersects with the centerline of West Street; thence with the centerline of West Street in a Northwesterly direction to a point where the centerline of West Street intersects with the centerline of Justice Street; thence with the centerline of Justice Street in a Easterly direction to a point where the centerline of Justice Street intersects with the centerline of the Atlantic Coastline Railroad Bed; thence with the centerline of the Atlantic Coastline Railroad Bed in a Southerly direction to a point where the centerline of the Atlantic Coastline Railroad Bed intersects with the centerline of Jackson Street; thence with the centerline of Jackson Street in a Easterly direction to a point where the centerline of Jackson Street intersects with the centerline of East Street; thence with the centerline of east Street in a Northerly direction to a point where the centerline of East Street intersects with the centerline of Howard Street; thence with the centerline of Howard Street in a Easterly direction to a point where the centerline of Howard Street intersects with the centerline of Park Drive; thence with the centerline of Park Drive in a Southerly direction to a point where the centerline of Park Drive intersects with the centerline of Pine Street; thence with the centerline of Pine Street in a Easterly direction to a point where the centerline of the City Limits Line of Roseboro (as existed on the 1980 Census Map); thence with the centerline of the

City Limits Line of Roseboro (as existed on the 1980 Census Map) in a Northerly direction and then a Westerly direction to a point where the City Limits Line of Roseboro (as existed on the 1980 Census Map) intersects with the Eastern right-of-way line of State Road No. 1002 and North Street extended; thence with the Eastern right-of-way of State Road No. 1002 and North Street in a Northwesterly direction to a point where the Eastern right-of-way line intersects with the centerline of N.C. Highway 242; thence with the centerline of N.C. Highway 242 in a Northerly direction intersects with the centerline of the Town Limits Line of the Town of Salemburg (as existed on the 1980 Census Map) and then follow the Town Limits Line of Salemburg (as existed on the 1980 Census Map) East, then North, then East, then North, then West, then North, then East, then North, then Northeast, then South, then East, then South, then Southeast, then North, then Northwest, then North, then Northwest, then West, then North, then Northeast, then Northwest, then Southwest, then North, then West, then North, then West, then Southwest, then South, then West, then South, then West, then South, then Southwest, then South to a point where the City Limits of the Town of Salemburg (as existed on the 1980 Census Map) intersects with the centerline of State Road No. 1233; thence with the centerline of State Road No. 1233 in a Northwesterly direction to a point where State Road No. 1233 intersects with the centerline of State Road No. 1412; thence with the centerline of State Road No. 1412 in a Northeasterly direction to a point where the centerline of State Road No. 1412 intersects with the centerline of State Road No. 1414; thence with the centerline of State Road No. 1414 in a Southeasterly direction to a point where the centerline of State Road No. 1414 intersects with the centerline of N.C. Highway 242 and State Road No. 1322; thence with the centerline of State Road No. 1322 in a Southeasterly direction to a point where the centerline of State Road No. 1322 intersects with the centerline of State Road No. 1233; thence with the centerline of State Road No. 1233 in a Easterly direction to a point where the centerline of State Road No. 1233 intersects with the centerline of State Road No. 1318; thence with the centerline of State Road No. 1318 in a Northerly direction to a point where the centerline of State Road No. 1318 intersects with the centerline of State Road No. 1315; thence with the centerline of State Road No. 1315 in a Easterly direction to a point where the centerline of State Road No. 1315 intersects with the centerline of State Road No. 1308; thence with the centerline of State of State Road No. 1308 in a Southerly direction to a point where the centerline of State Road No. 1308 intersects with the centerline of State Road No. 1233; thence with the centerline of State Road No. 1233 in a Southeasterly direction to a point where the

centerline of State Road No. 1233 intersects with the centerline of N.C. Highway 24; thence with the centerline of N.C. Highway 24 in a Westerly direction to a point where the centerline of N.C. Highway 24 intersects with the centerline of State Road No. 1303; thence with the centerline of State Road No. 1303 in a Northerly, Westerly, and Southerly direction to a point where the centerline of State Road No. 1303 intersects with the centerline of N.C. Highway 24; thence with the centerline of N.C. Highway 24 in a Westerly direction to a point where the centerline of N.C. Highway 24 intersects with the centerline of State Road No. 1238; thence with the centerline of State Road No. 1238 in a Southeasterly direction to a point where the centerline of State Road No. 1238 intersects with the centerline of State Road No. 1240; thence with the centerline of State Road No. 1240 in a Northeasterly direction to a point where the centerline of State Road No. 1240 intersects with the centerline of State Road No. 1235; thence with the centerline of State Road No. 1235 in a Southeasterly direction to a point where the centerline of State Road No. 1235 intersects with the centerline of State Road No. 1233; thence with the centerline of State Road No. 1233 in a Southerly direction to a point where the centerline of State Road No. 1233 intersects with the centerline of State Road No. 1214; thence with the centerline of State Road No. 1214 in a Northeasterly direction to a point where the centerline of State Road No. 1214 intersects with the centerline of State Road No. 1219; thence with the centerline of State Road No. 1219 in a Southeasterly and Easterly direction to a point where the centerline of State Road No. 1219 intersects with the centerline of U.S. Highway 701; thence with the centerline of U.S. Highway 701 in a Northeasterly direction to a point where the centerline of U.S. Highway 701 intersects with the centerline of State Road No. 1148; thence with the centerline of State Road No. 1148 in a Easterly direction to a point where the centerline of State Road No. 1148 intersects with the centerline of State Road No. 1141; thence with the centerline of State Road No. 1141 in a Northerly and Easterly direction to a point where the centerline of State Road No. 1141 intersects with the centerline of State Road No. 1149; thence with the centerline of State Road No. 1149 in a Southeasterly direction to a point where the centerline of State Road No. 1149 intersects with the centerline of State Road No. 1145; thence with the centerline of State Road No. 1145 in a Southwesterly and Westerly direction to a point where the centerline of State Road No. 1145 intersects with the centerline of State Road No. 1141; thence with the centerline of State Road No. 1141 in a Southeasterly direction to a point where the centerline of State Road No. 1141 intersects with the centerline of State Road No. 1004; thence with the centerline of State Road No.

1004 in a Northeasterly direction to a point where the centerline of State Road No. 1004 intersects with the centerline of State Road No. 1960; thence with the centerline of State Road No. 1960 in a Southerly direction to a point where the centerline of State Road No. 1960 intersects with the centerline of State Road No. 1945; thence with the centerline of State Road No. 1945 in a Easterly direction to a point where the centerline of State Road No. 1945 intersects with the centerline of State Road No. 1944; thence with the centerline of State Road No. 1944 in a Northerly and Easterly direction to a point where the Sampson County and Duplin County lines intersect with State Road No. 1944; thence with the Duplin County and Sampson county lines in a Northerly direction to a point where the centerline of the Duplin County and Sampson County line intersect with the centerline of Stewart Creek, the beginning.

(4) *DISTRICT NO. 4: BEGINNING* at a point in the center of South River, the Cumberland County and Sampson County lines, at a point where South River is intersected with the centerline of N.C. Highway No. 242 and runs with the centerline of N.C. Highway No. 242 in a Northeasterly direction to a point where the centerline of N.C. Highway 242 intersects with the centerline of State Road No. 1253; thence with the centerline of State Road No. 1253 in a Northerly direction to a point where the centerline of State Road No. 1253 intersects with the centerline of State Road No. 1246; thence with the centerline of State Road No. 1246 in a Northeasterly direction to a point where the centerline of State Road No. 1246 intersects with the centerline of State Road No. 1247; thence with the centerline of State Road No. 1247 in a Westerly direction to a point where the centerline of State Road No. 1247 intersects with the centerline of State Road No. 1254; thence with the centerline of State Road No. 1254 in a Northerly direction to a point where the centerline of State Road No. 1254 intersects with the centerline of N.C. Highway 24; thence with the centerline of N.C. Highway 24 in a Southeasterly direction to a point where the centerline of N.C. Highway 24 intersects with the centerline of State Road No. 1403; thence with the centerline of State Road No. 1403 in a Northerly direction to a point where the centerline of State Road No. 1403 intersects with the centerline of State Road No. 1405; thence with the centerline of State Road No. 1405 in a Easterly direction to a point where the centerline of State Road No. 1405 intersects with the centerline of State Road No. 1402; thence with the centerline of State Road No. 1402 in a Southerly direction to a point where the centerline of State Road No. 1402 intersects with the centerline of State Road No. 1401; thence with the centerline of State Road No. 1401 in a Northerly and Northeasterly direction to a point where the

centerline of State Road No. 1401 intersects with the centerline of State Road No. 1002; thence with the centerline of State Road No. 1002 in a Southerly direction to a point where the centerline of State Road No. 1002 intersects with the Western right-of-way line of N.C. Highway 242; thence with the Western edge of the right-of-way line of N.C. Highway 242 in a Southerly direction to a point where the Western edge of the right-of-way line of N.C. Highway 242 intersects with the centerline of the Town Limits Line of the Town of Roseboro (as existed on the 1980 Census Map); thence with the centerline of the Town Limits Line of the Town of Roseboro (as existed on the 1980 Census Map) in a Westerly direction to a point where the Town Limits Line of the Town of Roseboro (as existed on the 1980 Census Map) intersects with the centerline of the Atlantic Coastline Railroad Bed; thence with the centerline of the Atlantic Coastline Railroad Bed in a Southeasterly direction to a point where the Atlantic Coastline Railroad Bed intersects with the centerline of Broad Street; thence with the centerline of Broad Street in a Southerly direction to a point where the centerline of Broad Street intersects with the centerline of McPherson Street; thence with the centerline of McPherson Street in a Southwesterly direction to a point where the centerline of McPherson Street intersects with the centerline of Vance Street; thence with the centerline of Vance Street in a Southeasterly direction to a point where the centerline of Vance Street intersects with the centerline of Clinton Street; thence with the centerline of Clinton Street in a Southwesterly direction to a point where the centerline of Clinton Street intersects with the centerline of Charles Street; thence with the centerline of Charles Street in a Northerly direction to a point where the centerline of Charles Street intersects with the Town Limits Line of the Town of Roseboro (as existed on the 1980 Census Map); thence with the centerline of the Town Limits Line of the Town of Roseboro (as existed on the 1980 Census Map) in a Southerly direction and then with the City Limits Line in a Easterly direction to a point where the Town of Roseboro Limits Line (as existed on 1980 Census Map) intersects with the centerline of West Street; thence with the centerline of West Street in a Northwesterly direction to a point where the centerline of West Street intersects with the centerline of Justice Street; thence with the centerline of Justice Street in a Easterly direction to a point where the centerline of Justice Street intersects with the centerline of the Atlantic Coastline Railroad Bed; thence with the centerline of the Atlantic Coastline Railroad Bed in a Southerly direction to a point where the centerline of the Atlantic Coastline Railroad Bed intersects with the centerline of Jackson Street; thence with the centerline of Jackson Street in a Easterly direction to a point where the centerline of Jackson Street intersects with the centerline of

East Street; thence with the centerline of East Street in a Northerly direction to a point where the centerline of East Street intersects with the centerline of Howard Street; thence with the centerline of Howard Street in a Easterly direction to a point where the centerline of Howard Street intersects with the centerline of Park Drive; thence with the centerline of Park Drive in a Southerly direction to a point where the centerline of Park Drive intersects with the centerline of Pine Street; thence with the centerline of Pine Street in a Easterly direction to a point where the centerline of the City Limits Line of Roseboro (as existed on the 1980 Census Map); thence with the centerline of the City Limits Line of Roseboro (as existed on the 1980 Census Map) in a Northerly direction and then a Westerly direction to a point where the City Limits Line of Roseboro (as existed on the 1980 Census Map) intersects with the Eastern right-of-way line of State Road No. 1002 and North Street extended; thence with the Eastern right-of-way of State Road No. 1002 and North Street in a Northwesterly direction to a point where the Eastern right-of-way line intersects with the centerline of N.C. Highway 242; thence with the centerline of N.C. Highway 242 in a Northerly direction intersects with the centerline of the Town Limits Line of the Town of Salemburg (as existed on the 1980 Census Map) and then follow the Town Limits Line of Salemburg (as existed on the 1980 Census Map) East, then North, then East, then North, then West, then North, then East, then North, then Northeast, then South, then East, then South, then Southeast, then North, then Northwest, then North, then Northwest, then West, then North, then Northeast, then Northwest, then Southwest, then North, then West, then North, then West, then Southwest, then South, then West, then South, then West, then South, then Southwest, then South to a point where the City Limits of the Town of Salemburg (as existed on the 1980 Census Map) intersects with the centerline of State Road No. 1233; thence with the centerline of State Road No. 1233 in a Northwesterly direction to a point where State Road No. 1233 intersects with the centerline of State Road No. 1412; thence with the centerline of State Road No. 1412 in a Northeasterly direction to a point where the centerline of State Road No. 1412 intersects with the centerline of State Road No. 1414; thence with the centerline of State Road No. 1414 in a Southeasterly direction to a point where the centerline of State Road No. 1414 intersects with the centerline of N.C. Highway 242 and State Road No. 1322; thence with the centerline of State Road No. 1322 in a Southeasterly direction to a point where the centerline of State Road No. 1322 intersects with the centerline of State Road No. 1233; thence with the centerline of State Road No. 1233 in a Easterly direction to a point where the centerline of State Road No. 1233 intersects with the centerline of

State Road No. 1318; thence with the centerline of State Road No. 1318 in a Northerly direction to a point where the centerline of State Road No. 1318 intersects with the centerline of State Road No. 1315; thence with the centerline of State Road No. 1315 in a Easterly direction to a point where the centerline of State Road No. 1315 intersects with the centerline of State Road No. 1308; thence with the centerline of State Road No. 1308 in a Southerly direction to a point where the centerline of State Road No. 1308 intersects with the centerline of State Road No. 1233; thence with the centerline of State Road No. 1233 in a Southeasterly direction to a point where the centerline of State Road No. 1233 intersects with the centerline of N.C. Highway 24; thence with the centerline of N.C. Highway 24 in a Westerly direction to a point where the centerline of N.C. Highway 24 intersects with the centerline of State Road No. 1303; thence with the centerline of State Road No. 1303 in a Northerly, Westerly, and Southerly direction to a point where the centerline of State Road No. 1303 intersects with the centerline of N.C. Highway 24; thence with the centerline of N.C. Highway 24 in a Westerly direction to a point where the centerline of N.C. Highway 24 intersects with the centerline of State Road No. 1238; thence with the centerline of State Road No. 1238 in a Southeasterly direction to a point where the centerline of State Road No. 1238 intersects with the centerline of State Road No. 1240; thence with the centerline of State Road No. 1240 in a Northeasterly direction to a point where the centerline of State Road No. 1240 intersects with the centerline of State Road No. 1235; thence with the centerline of State Road No. 1235 in a Southeasterly direction to a point where the centerline of State Road No. 1235 intersects with the centerline of State Road No. 1233; thence with the centerline of State Road No. 1233 in a Southerly direction to a point where the centerline of State Road No. 1233 intersects with the centerline of State Road No. 1214; thence with the centerline of State Road No. 1214 in a Northeasterly direction to a point where the centerline of State Road No. 1214 intersects with the centerline of State Road No. 1219; thence with the centerline of State Road No. 1219 in a Southeasterly and Easterly direction to a point where the centerline of State Road No. 1219 intersects with the centerline of U.S. Highway 701; thence with the centerline of U.S. Highway 701 in a Northeasterly direction to a point where the centerline of U.S. Highway 701 intersects with the centerline of State Road No. 1148; thence with the centerline of State Road No. 1148 in a Easterly direction to a point where the centerline of State Road No. 1148 intersects with the centerline of State Road No. 1141; thence with the centerline of State Road No. 1141 in a Northerly and Easterly direction to a point where the centerline of State Road No.

1141 intersects with the centerline of State Road No. 1149; thence with the centerline of State Road No. 1149 in a Southeasterly direction to a point where the centerline of State Road No. 1149 intersects with the centerline of State Road No. 1145; thence with the centerline of State Road No. 1145 in a Southwesterly and Westerly direction to a point where the centerline of State Road No. 1145 intersects with the centerline of State Road No. 1141; thence with the centerline of State Road No. 1141 in a Southeasterly direction to a point where the centerline of State Road No. 1141 intersects with the centerline of State Road No. 1004; thence with the centerline of State Road No. 1004 in a Northeasterly direction to a point where the centerline of State Road No. 1004 intersects with the centerline of State Road No. 1960; thence with the centerline of State Road No. 1960 in a Southerly direction to a point where the centerline of State Road No. 1960 intersects with the centerline of State Road No. 1945; thence with the centerline of State Road No. 1945 in a Easterly direction to a point where the centerline of State Road No. 1945 intersects with the centerline of State Road No. 1944; thence with the centerline of State Road No. 1944 in a Northerly and Easterly direction to a point where the Sampson County and Duplin County lines intersect with State Road No. 1944; thence with the Duplin County and Sampson County lines in a Southwesterly, Southeasterly and Easterly direction to a point where the Sampson County and Duplin County line intersects with Pender County; thence with the Sampson County and Pender County line in a Southerly and Southwesterly direction to a point where the Pender County line and the Sampson County line and Bladen County line intersects with the center of South River; thence with the center of South River, the Sampson County and Bladen County line, in a Northerly and Northwesterly direction to a point where the Bladen County, Sampson County and Cumberland County line intersect in the center of South River; thence with the center of South River, Sampson County and Cumberland County line, in a Northwesterly direction to a point where the Sampson County and Cumberland County line and South River intersect with the centerline of N.C. Highway No. 242, the beginning.

(5) *DISTRICT NO. 5: BEGINNING* at a point in the line of Sampson County and Wayne County, said point being where the centerline of N.C. Highway 55 and N.C. Highway 50 intersects with the Sampson County and Wayne County line and runs in a Southerly direction to a point where N.C. Highway 50 intersects with State Road No. 1722 and State Road No. 1721; thence with the centerline of N.C. Highway 50 in a Easterly and Southeasterly direction to a point where the centerline of N.C. Highway 50 intersects with the centerline of State Road No. 1729; thence with the centerline of State

Road No. 1729 in a Southeasterly, Westerly, and Northwesterly direction to a point where the centerline State Road No. 1729 intersects with the centerline of State Road No. 1725; thence with the centerline of State Road No. 1725 in a Northerly direction to a point where State Road No. 1725 intersects with the centerline of State Road No. 1730; thence with the centerline of State Road No. 1730 in a Westerly direction to a point where State Road No. 1730 intersects with the centerline of State Road No. 1731; thence with the centerline of State Road No. 1731 in a Westerly direction to a point where State Road No. 1731 intersects with the centerline of State Road No. 1722; thence with the centerline of State Road No. 1722 in a Westerly direction to a point where State Road No. 1722 intersects with the centerline of State Road No. 1711; thence with the centerline of State Road No. 1711 in a Northerly direction to a point where State Road No. 1711 intersects with the centerline of State Road No. 1715; thence with the centerline of State Road No. 1715 in a Westerly direction to a point where State Road No. 1715 intersects with the centerline of State Road No. 1714; thence with the centerline of State Road No. 1714 in a Southerly direction to a point where State Road No. 1714 intersects with the centerline of State Road No. 1843 and U.S. Highway 701; thence with the centerline of State Road No. 1843 in a Westerly direction to a point where State Road No. 1843 intersects with the centerline of State Road No. 1802; thence with the centerline of State Road No. 1802 in a Northerly direction to a point where State Road No. 1802 intersects with the centerline of State Road No. 1845; thence with the centerline of State Road No. 1845 in a Westerly direction to a point where the centerline of State Road No. 1845 intersects with the centerline of Beaver Dam Creek; thence with the centerline of Beaver Dam Creek in a Southerly direction to a point where the centerline of Beaver Dam Creek intersects with the centerline of State Road No. 1636; thence with the centerline of State Road No. 1636 in a Easterly direction to a point where the centerline of State Road No. 1636 intersects with the centerline of State Road No. 1817; thence with the centerline of State Road No. 1817 in a Southerly direction to a point where the centerline of State Road No. 1817 intersects with the centerline of Ward Swamp; thence with the centerline of Ward Swamp in a Easterly direction to a point where the centerline of Ward Swamp intersects with the centerline of U.S. Highway 701; thence with the centerline of U.S. Highway 701 in a Southerly direction to a point where the centerline of U.S. Highway 701 intersects with the centerline of State Road No. 1743; thence with the centerline of State Road No. 1743 in a Easterly, Northeasterly, and Northwesterly direction to a point where the centerline of State Road No. 1743 intersects with the centerline of State Road No. 1739;

thence with the centerline of State Road No. 1739 in a Northerly direction to a point where the centerline of State Road No. 1739 intersects with the centerline of State Road No. 1744, State Road No. 1741, and State Road No. 1738; thence with the centerline of State Road No. 1738 in a Northeasterly direction to a point where the centerline of State Road No. 1738 intersects with the centerline of State Road No. 1740; thence with the centerline of State Road No. 1740 in a Southerly direction to a point where State Road No. 1740 intersects with the centerline of N.C. Highway 403; thence with the centerline of N.C. Highway 403 in a Westerly direction to a point where N.C. Highway 403 crosses Six Runs Creek; thence with the center of Six Runs Creek in a Southerly direction to a point where Six Runs Creek intersects with the centerline of State Road No. 1904; thence with the centerline of State Road No. 1904 in a Westerly direction to a point where State Road No. 1904 intersects with the centerline of N.C. Highway 403; thence with the centerline of N.C. Highway 403 in a Northeasterly direction to a point where N.C. Highway 403 intersects with the centerline of State Road No. 1748; thence with the centerline of State Road No. 1748 in a Westerly direction to a point where State Road No. 1748 intersects with the centerline of U.S. Highway 701; thence with the centerline of U.S. Highway 701 in a Southerly direction to a point where U.S. Highway 701 intersects with the centerline of State Road No. 1751; thence with the centerline of State Road No. 1751 to a point where State Road No. 1751 intersects with the centerline of State Road No. 1749; thence with the centerline of State Road No. 1749 in a Southerly direction to a point where State Road No. 1749 intersects with the City Limits Line of the City of Clinton (as existed on the 1980 Census Map); thence with the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) in a Easterly and Southerly direction to a point where the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) intersects with the centerline of N.C. Highway 403 (College Street extended); thence with the centerline of College Street in a Westerly direction to a point where College Street intersects with the centerline of Warsaw Road; thence with the centerline of Warsaw Road in a Southeasterly direction to a point where Warsaw Road intersects with the centerline of Lafayette Street; thence with the centerline of Lafayette Street in a Northeasterly direction to a point where Lafayette Street intersects with the centerline of Powell Street; thence with the centerline of Powell Street in a Southeasterly and Southwesterly direction to a point where Powell Street intersects with the centerline of Warsaw Road; thence with the centerline of Warsaw Road in a Southeasterly direction to a point where Warsaw Road intersects with the centerline of Morissey Blvd.; thence with the

centerline of Morissey Blvd. in a Southwesterly direction to a point where Morissey Blvd. intersects with the centerline of Devane Street; thence with the centerline of Devane Street in a Northwesterly direction to a point where Devane Street intersects with the centerline of College Street; thence with the centerline of College Street in a Southwesterly direction to a point where the centerline of College Street intersects with the centerline of Sampson Street; thence with the centerline of Sampson Street in a Northwesterly direction to a point of 160 feet beyond the point where the centerline of Sampson Street intersects with the centerline of E. Johnston Street; thence North 49 degrees East to a point in the L.C. Parker Subdivision according to Plat recorded in Map Book 3, Page 23, Sampson County Registry; thence North 41 degrees West 557 feet, more or less, to a point in the line of Lot 5 of the L. C. Parker Subdivision; thence South 48 degrees 30 minutes West 70 feet to a point; thence North 41 degrees 30 minutes West 382 feet to a point; thence North 49 degrees 10 minutes East 189 feet to a point; thence North 38 degrees 50 minutes West 194 1/2 feet to a point; thence North 38 degrees East 350 feet to a point in the center of Cat Tail Branch; thence up the run of Cat Tail Branch in a Northerly direction to a point where Cat Tail Branch intersects with the centerline of Blount Street; thence with the centerline of Blount Street in a Northeasterly direction to a point where the centerline of Blount Street intersects with the centerline of Beaman Street; thence with the centerline of Beaman Street in a Northerly direction to a point where the centerline Beaman Street intersects with Beaver Dam Branch; thence up Beaver Dam Branch in a Westerly direction, then Williams Mill Branch to the City Limits Line of the City of Clinton (as existed on the 1980 Census Map); thence with the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) in a Westerly, Southwesterly, Northwesterly, and Southwesterly direction to a point where the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) crosses the centerline of Royal Lane; thence with the centerline of Royal Lane in a Southeasterly direction to a point where the centerline of Royal Lane intersects with the centerline of Melson Street; thence with the centerline of Melson Street in a Northeasterly direction to a point where the centerline of Melson Street intersects with the centerline of Oakland Blvd.; thence with the centerline of Oakland Blvd. in a Southeasterly direction to a point where the centerline of Oakland Blvd. intersects with the centerline of Naylor's Street; thence with the centerline of Naylor's Street in a Southwesterly direction to a point where the centerline of Naylor's Street intersects with the centerline of Shields Street; thence with the centerline of Shields Street in a Southeasterly direction to a point where the centerline of Shields Street

intersects with the centerline of N.C. Highway 24 (Sunset Avenue); thence with the centerline of N.C. Highway 24 (Sunset Avenue) in a Southwesterly direction to a point where the centerline of N.C. Highway 24 (Sunset Avenue) intersects with the centerline of the City Limits Line of the City of Clinton (as existed on the 1980 Census Map); thence with the centerline of the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) in a Southerly and Southeasterly direction to a point where the centerline of the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) intersects with the centerline of Elizabeth Street; thence with the centerline of Elizabeth Street in a Northeasterly direction to a point where the centerline of Elizabeth Street intersects with the centerline of Davis Street; thence with the centerline of Davis Street in a Northwesterly direction to a point where the centerline of Davis Street intersects with the centerline of Polly Street; thence with the centerline of Polly Street in a Northerly direction, if extended, to the center of the media of U.S. Highway 421 and 701 Bypass; thence with the center of the media of U.S. Highway 421 and 701 to a point where U.S. Highway 421 and 701 Bypass would be intersected with Forest Trail, if extended; thence with the centerline of Forest Trail in a Southerly and Easterly direction to a point where the centerline of Forest Trail intersects with the centerline of Fayetteville Street; thence with the centerline of Fayetteville Street in a Southeasterly direction to a point where the centerline of Fayetteville Street intersects with the centerline of Williams Street; thence with the centerline of Williams Street in a Northerly direction to a point where the centerline of Williams Street intersects with the centerline of W. Johnston Street; thence with the centerline of W. Johnston Street in a Northeasterly direction to a point where the centerline of W. Johnston Street intersects with the centerline of McKoy Street; thence with the Centerline of McKoy Street in a Southeasterly direction to a point where the centerline of McKoy Street intersects with the centerline of Wall Street; thence with the centerline of Wall Street in a Southeasterly direction to a point where the centerline of Wall Street intersects with the centerline of Main Street; thence with the centerline of Main Street in a Northeasterly direction to a point where the centerline of Main Street intersects with the centerline of Lisbon Street; thence with the centerline of Lisbon Street in a Southeasterly direction to a point where the centerline of Lisbon Street intersects with the centerline of John Street; thence with the centerline of John Street in a Southwesterly direction to a point where the centerline of John Street intersects with the centerline Ferrell Street; thence with the centerline of Ferrell Street in a Southeasterly direction to a point where the centerline of Ferrell Street intersects with the centerline of

Morissey Blvd.; thence with the centerline of Morissey Blvd. in a Southwesterly direction to a point where the centerline of Morissey Blvd. intersects with the centerline of Elizabeth Street; thence with the centerline of Elizabeth Street in a Southwesterly direction to a point where the centerline of Elizabeth Street crosses the centerline of the media of U.S. Highway 421 and 701 Bypass; thence with the centerline of the media of U.S. Highway 421 and 701 Bypass in a Southeasterly direction to a point where the centerline of the media of U.S. Highway 421 and 701 intersects with the centerline of the City Limits Line of the City of Clinton (as existed on the 1980 Census Map); thence with the centerline of the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) in a Southeasterly direction to a point where the centerline of the City Limits Line of the City of Clinton (as existed on the 1980 Census Map) intersects with the centerline of Southwest Blvd.; thence with the centerline of Southwest Blvd. in a Southeasterly direction to a point where the centerline of Southwest Blvd. intersects with the centerline of Southeast Blvd.; thence with the centerline of Southeast Blvd. in a Southerly direction to a point where the centerline of Southeast Blvd. intersects with the centerline of State Road No. 1924; thence with the centerline of State Road No. 1924 in a Easterly direction to a point where the centerline of State Road No. 1924 intersects with the centerline of State Road No. 1933; thence with the centerline of State Road No. 1933 in a Southerly direction to a point where the centerline of State Road No. 1933 intersects with the centerline of State Road No. 1932; thence with the centerline of State Road No. 1932 in a Southerly direction to a point where the centerline of State Road No. 1932 intersects with the centerline of State Road No. 1004; thence with the centerline of State Road No. 1004 in a Easterly direction to a point where the centerline of State Road No. 1004 intersects with the center of Six Runs Creek; thence with the center of Six Runs Creek in a Southerly direction to a point where Six Runs Creek is intersected by Stewart Creek; thence with the center of Stewart Creek in a Easterly direction to the Duplin County and Sampson County line; thence with the Duplin County and Sampson County line and the Wayne County line in a Northerly direction to the point and place where the Wayne County and Sampson County line is intersected by N.C. Highway 55 and N.C. Highway 50, the beginning.

Sec. 3.1. Subsequent to each decennial federal census, the Board of County Commissioners shall review the existing districts, and make such adjustments as may be necessary to comply with the Voting Rights Act of 1965 and the Fourteenth and Fifteenth Amendments to

the Constitution of the United States, in accordance with the procedures of G.S. 153A-22.

Sec. 4. Vacancies occurring on the Board of County Commissioners for any cause shall be filled as provided by G.S. 153A-27.

Sec. 5. Chapter 574, Session Laws of 1975, is repealed.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.B. 1365

CHAPTER 970

AN ACT TO REPEAL THE INHERITANCE TAX EXEMPTION FOR FEDERAL RETIREMENT BENEFITS, THEREBY MAKING THE TAX TREATMENT FOR FEDERAL RETIREMENT BENEFITS THE SAME AS FOR STATE RETIREMENT BENEFITS, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE INHERITANCE TAX EXEMPTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-3(8) is repealed.

Sec. 2. The Legislative Research Commission may study the exemptions from the State's inheritance tax to determine if the changes made to the inheritance tax law since 1985 affect the rationale for the exemptions. The Legislative Research Commission may assign this study to the Revenue Laws Study Committee or a separate committee. The Commission shall report its findings on this issue to the 1991 General Assembly.

Sec. 3. Section 1 of this act shall become effective September 1, 1990, and shall apply to the estates of decedents dying on or after that date. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.B. 1398

CHAPTER 971

AN ACT TO CODIFY THE NEW METHOD ELECTING THE SAMPSON COUNTY BOARD OF EDUCATION ESTABLISHED PURSUANT TO THE FEDERAL VOTING RIGHTS ACT.

The General Assembly of North Carolina enacts:

Section 1. The Sampson County Board of Education shall consist of seven members elected in nonpartisan elections at the time provided by State law.

Sec. 2. In 1992 and every four years thereafter, three members shall be elected to the Board of Education. Candidates may reside anywhere in the county school unit. All candidates for the three positions shall be listed together on a single ballot and all voters in the school unit will be eligible to vote in the election, but each voter may vote for one candidate only. The three candidates receiving the most votes shall be elected. There shall be no runoffs.

Sec. 3. In 1994 and every four years thereafter, four members shall be elected. Candidates may reside anywhere in the county school unit. All candidates for the four positions shall be listed together on a single ballot and all voters in the school unit will be eligible to vote in the election, but each voter may vote for one candidate only. The four candidates receiving the most votes shall be elected. There shall be no runoffs.

Sec. 4. Incumbent members of the board shall be entitled to serve the remainders of their terms, three of which are due to expire in 1992 and four in 1994.

Sec. 5. If a vacancy occurs on the board, the remaining members shall appoint a person to serve the remainder of the unexpired term of the vacating member.

Sec. 6. This act is intended to codify without change the election method adopted by the Sampson County Board of Education on July 13, 1989, pursuant to the court order of July 10, 1989, in United States of America v. Sampson County, North Carolina, et al., United States District Court, Eastern District of North Carolina, No. 88-121-CIV-3. Pursuant to that order, the 1990 election is being conducted according to the new election method. Enactment of this legislation is intended to comply with the requirement of the court order that the board submit to the General Assembly and seek passage of legislation codifying the plan for elections after 1990.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.B. 1400

CHAPTER 972

AN ACT TO PROHIBIT THE HUNTING OR TRANSPORTATION
OF DEER FROM OR BY BOAT OR FLOATING DEVICE ON A
PORTION OF THE TAR RIVER IN EDGECOMBE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful for any person to hunt, take, or transport deer from or with the aid of any boat or floating device on that portion of the Tar River from State Road 1252 to N.C. Highway 44 in Edgecombe County.

Sec. 2. Violation of this act is a misdemeanor punishable in the discretion of the court.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.B. 1404

CHAPTER 973

AN ACT TO REQUIRE CONSENT OF THE HARNETT, HAYWOOD, HENDERSON, JACKSON, LEE, MADISON, ROCKINGHAM, STOKES, SWAIN, AND UNION COUNTY BOARDS OF COMMISSIONERS BEFORE LAND IN THOSE COUNTIES MAY BE CONDEMNED OR ACQUIRED BY A UNIT OF LOCAL GOVERNMENT OUTSIDE THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 283, Session Laws of 1981, as amended, is amended by adding immediately after the word "Person" the words, "Harnett, Haywood, Henderson, Jackson, Lee, Madison, Rockingham, Stokes, Swain, Union,".

Sec. 2. This act shall not affect any pending litigation.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.B. 1414

CHAPTER 974

AN ACT TO AUTHORIZE BURKE, GASTON, LEE, LENOIR, AND WASHINGTON COUNTIES TO COLLECT CERTAIN FEES IN THE SAME MANNER AS AD VALOREM TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 591, Session Laws of 1989, reads as rewritten:

"Sec. 2. This act applies to Ashe, Burke, Gaston, Lee, Lenoir, Robeson, Washington, and Wayne Counties only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.B. 1449

CHAPTER 975

AN ACT TO CHANGE THE FILING PERIOD FOR THE
LEAKSVILLE TOWNSHIP BOARD OF EDUCATION (EDEN
CITY SCHOOL ADMINISTRATIVE UNIT).

The General Assembly of North Carolina enacts:

Section 1. Section 10 of Chapter 57, Private Laws of 1929, as rewritten by Section 1 of Chapter 557, Session Laws of 1951, is amended by deleting "file written notice of candidacy with the county board of elections at least sixty (60) days prior to the general election", and substituting "file written notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August prior to the general election".

Sec. 2. Notwithstanding Section 1 of this act, the Rockingham County Board of Elections shall accept candidate filings for the 1990 election for the Board of Trustees of the Leaksville Township Public School District received:

- (1) Prior to 12:00 noon on the first Friday of July but before Section 1 of this act is approved under Section 5 of the Voting Rights Act of 1965; or
- (2) After 12:00 noon on the first Friday in August but before the earlier of:
 - a. The 60th day before the general election; or
 - b. The approval of Section 1 of this act under Section 5 of the Voting Rights Act of 1965.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.B. 1535

CHAPTER 976

AN ACT TO ESTABLISH FEES FOR PROCESSING
APPLICATIONS FOR APPROVAL OF CONSTRUCTION OR
REMOVAL OF DAMS.

The General Assembly of North Carolina enacts:

Section 1. Part 3 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.28A. Application fees.

(a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a fee schedule for processing applications for approvals of construction, repair, alteration, or removal of dams issued under

this Part. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing the applications and for related compliance activities. The total amount of fees collected in any fiscal year may not exceed one-third of the total personnel and administrative costs incurred by the Department for processing the applications and for related compliance activities in the prior fiscal year, but in no event may any one approval fee exceed the larger of two hundred dollars (\$200.00) or two percent (2%) of the actual cost of construction, or removal of the applicable dam. The provisions of G.S. 143-215.3(a)(1b) do not apply to these fees.

(b) Fees collected under this section shall be credited to the General Fund and may be used to:

- (1) Defray the expenses of any project or program, including educational programs, supporting the application review and compliance activities under this Part; and
- (2) Establish additional permanent positions, subject to Chapter 126 of the General Statutes, to conduct application review and compliance activities under this Part.

(c) The Department shall make a biennial report to the Joint Legislative Commission on Governmental Operations and the Director of the Fiscal Research Division on the cost of the State's dam safety program. The report shall include the fees established and collected under this section and any other information requested by the General Assembly or the Commission."

Sec. 2. G.S. 143-215.3A reads as rewritten:

" § 143-215.3A. Use of application and permit fees.

There is established a separate nonreverting account within the Department of Environment, Health, and Natural Resources. The account ~~will~~ may be used, to the extent appropriated by the General Assembly, to (a) defray the expenses of any project or program supporting the permitting and compliance activities needed to protect the State's surface water, groundwater, and air quality, and (b) establish additional permanent positions, under the Personnel Act, for water, groundwater, and air quality permitting and compliance activities. All application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38, except those collected under Part 2 of Article 21A and deposited in the Oil or Other Hazardous Substances Pollution Protection Fund, and except as provided in G.S. 143-215.28A and G.S. 143-215.3B shall be ~~deposited in~~ credited to the account. The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a) shall not exceed thirty percent (30%) of the total budgets from all sources of environmental permitting and compliance programs within the

Department of Environment, Health, and Natural Resources. The Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the State's environmental permitting programs contained within such Department. The report shall include, but is not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.B. 1622

CHAPTER 977

AN ACT TO PROVIDE THAT THE PROBATIONARY TIME BETWEEN AN INTERLOCUTORY DECREE AND FINAL ADOPTION ORDER MAY BE THE SAME FOR PRIVATE ADOPTIONS AS THOSE ARRANGED BY SOCIAL SERVICES OR A LICENSED CHILD-PLACING AGENCY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-21(d) reads as rewritten:

"(d) Upon examination of the written report required under G.S. 48-16, the court may, in its discretion, shorten the probationary period between the granting of the interlocutory decree and the final order of adoption by the length of time the child has resided in the home of the petitioners prior to the granting of the interlocutory decree; ~~provided, that the child was placed in the home of the petitioners by a director of social services or by a licensed child-placing agency and such fact has been certified to the court by the director of social services or the executive head of the child-placing agency,~~ but no final order shall be entered until the child shall have resided in the home of the petitioners for a period of one year."

Sec. 2. This act is effective upon ratification and shall apply retroactively to petitions for adoption that are pending on the date of ratification and shall apply to petitions for adoption whether filed before or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 285

CHAPTER 978

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE FIRE
SPRINKLER CONTRACTOR LICENSING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-16, as rewritten by Chapter 842 of the 1989 Session Laws (1990 Reg. Sess.), reads as rewritten:

"§ 87-16. *Board of Examiners; appointment; term of office.*

There is created the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors consisting of seven members appointed by the Governor: one member from a school of engineering of the Greater University of North Carolina, one member who is a plumbing or mechanical inspector from a city in North Carolina, one licensed air conditioner contractor, one licensed plumbing ~~or mechanical~~ contractor, one licensed heating contractor, one licensed fire sprinkler contractor, and one person who has no tie with the construction industry to represent the interests of the public at large. Members serve for terms of seven years, with the term of one member expiring each year. The term of the member initially appointed to fill the position of licensed fire sprinkler contractor shall commence April 25, 1991. No member appointed after June 7, 1979, shall serve more than one complete consecutive term. Vacancies occurring during a term are filled by appointment of the Governor for the remainder of the unexpired term."

Sec. 2. G.S. 87-21(a)(5), as rewritten by Chapter 842 of the 1989 Session Laws (Reg. Sess. 1990), reads as rewritten:

"(5) Any person, firm or corporation, who for a valuable consideration, (i) installs, ~~(i)~~ alters or restores, or offers to install, alter or restore, either plumbing, heating group number one, or heating group number two, or heating group number three, or (ii) lays out, fabricates, installs, alters or restores, or offers to lay out, fabricate, install, alter or restore fire sprinklers, or any combination thereof, as defined in this Article, shall be deemed and held to be engaged in the business of plumbing, heating, or fire sprinkler contracting; provided, however, that nothing herein shall be deemed to restrict the practice of qualified registered professional engineers. Any person who installs a plumbing, heating, or fire sprinkler system on property which at the time of installation was intended for sale or to be used primarily for rental is deemed to be engaged in the business of plumbing, heating, or fire sprinkler contracting

without regard to receipt of consideration, unless exempted elsewhere in this Article."

Sec. 3. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 685

CHAPTER 979

AN ACT TO CHANGE THE NAME OF THE NORTH CAROLINA HUMAN RELATIONS COUNCIL TO THE NORTH CAROLINA HUMAN RELATIONS COMMISSION AND TO AMEND THE FAIR HOUSING ACT TO CONFORM TO FEDERAL REQUIREMENTS REGARDING FAIR HOUSING LAWS AND ENFORCEMENT.

The General Assembly of North Carolina enacts:

Section 1. The word "Council" is deleted and replaced by the word "Commission", the word "council" is deleted and replaced by the word "commission", the word "Council's" is deleted and replaced by the word "Commission's", and the word "council's" is deleted and replaced by the word "commission's" whenever they appear in each of the following provisions of the General Statutes or Session Laws of North Carolina:

- (1) G.S. 41A-3. Definitions.
- (2) G.S. 41A-7(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), and (n). Enforcement.
- (3) G.S. 41A-8. Investigation; subpoenas.
- (4) Part 9. North Carolina Human Relations Council.
- (5) G.S. 143-422.3. Investigations; conciliations.
- (6) G.S. 143B-391. North Carolina Human Relations Council -- creation; powers and duties.
- (7) G.S. 143B-392. North Carolina Human Relations Council -- members; selection; quorum; compensation.
- (8) G.S. 143B-433.2(a)(11) (Housing Coordination and Policy Council membership).
- (9) 1985 Session Laws, Chapter 776, Section 2, as amended by 1989 Session Laws, Chapter 213, Section 2 (Asheville Fair Housing Commission).

Sec. 2. The Revisor of Statutes is authorized to delete any reference to the North Carolina Human Relations Council or derivative thereof in any portion of the General Statutes or in any Session Law of local applicability to which conforming amendments are not made by this act and replace them with the phrase North

Carolina Human Relations Commission or the appropriate derivative, consistent with the provisions of this act.

Sec. 3. G.S. 41A-4(d) reads as rewritten:

"(d) It is an unlawful discriminatory housing practice to deny any person who is otherwise qualified by State law access to or membership or participation in any real estate brokers' organization, multiple listing service, or other service, organization, or facility relating to the business of engaging in real estate transactions, or to discriminate in the terms or conditions of such access, membership, membership, or participation because of race, color, religion, sex, national origin, handicapping condition, or familial status."

Sec. 4. G.S. 41A-6 reads as rewritten:

"§ 41A-6. *Exemptions.*

(a) The provisions of G.S. 41A-4, except for subdivision (a)(6), do not apply to the following:

- (1) The rental of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the lessor or a member of his family resides in one of the housing accommodations;
- (2) The rental of a room or rooms in a private house, not a boarding house, if the lessor or a member of his family resides in the house;
- (3) Religious institutions or organizations or charitable or educational organizations operated, supervised, or controlled by religious institutions or organizations which give preference to members of the same religion in a real estate transaction, as long as membership in such religion is not restricted by race, color, sex, national origin, handicapping condition, or familial status;
- (4) Private clubs, not in fact open to the public, which incident to their primary purpose or purposes provide lodging, which they own or operate for other than a commercial purpose, to their members or give preference to their members;
- (5) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property; and
- ~~(6) Any person, otherwise subject to its provisions, who adopts and carries out a plan to eliminate present effects of past discriminatory practices or to assure equal opportunity in real estate transactions, if the plan is part of a conciliation agreement entered into by that person under the provisions of this Chapter or under the provisions of the Federal Fair~~

~~Housing Act, 42 U.S.C. § 3601 et seq. or is voluntary and is consistent with the purposes thereof;~~

- ~~(7)~~ (6) The sale, rental, exchange, or lease of commercial real estate. For the purposes of this Chapter, commercial real estate means real property which is not intended for residential use.

(b) No provision of this Chapter requires that a dwelling be made available to a person whose tenancy would constitute a direct threat to the health or safety of other persons or whose tenancy would result in substantial physical damage to the property of others.

(c) No provision of this Chapter limits the applicability of any reasonable local or State restrictions regarding the maximum number of occupants permitted to occupy a dwelling unit.

(d) Nothing in this Chapter shall be deemed to nullify any provisions of the North Carolina Building Code applicable to the construction of residential housing for the handicapped.

(e) No provision of this Chapter regarding familial status applies with respect to housing for older persons. 'Housing for older persons' means housing:

- (1) Provided under any State or federal program specifically designed and operated to assist elderly persons as defined in the program;
- (2) Intended for and solely occupied by person 62 years or older. Housing satisfies the requirements of this subdivision even though there are persons residing in such housing on ~~October 1, 1989~~, September 13, 1988, who are under 62 years of age, provided that all new occupants after ~~October 1, 1989~~, September 13, 1988, are 62 years or older; or
- (3) Intended for and operated for occupancy by at least one person 55 years of age or older per unit as shown by such factors as (i) the existence of significant facilities and services specifically designed to meet the physical and social needs of older persons or, if this is not practicable, that the housing provides important housing opportunities for older persons, (ii) at least eighty percent (80%) of the units are occupied by at least one person 55 years of age or older per unit; and (iii) the publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years or older. Housing satisfies the requirements of this subdivision even though on ~~October 1, 1989~~, September 13, 1988, under eighty percent (80%) of the units in the housing facility are occupied by at least one person 55 years or older per unit, provided that eighty percent (80%) of the units that are

occupied by new tenants after ~~October 1, 1989~~, September 13, 1988, are occupied by at least one person 55 years or older per unit until such time as eighty percent (80%) of all the units in the housing facility are occupied by at least one person 55 years or older. Housing facilities newly constructed for first occupancy after ~~October 1, 1989~~, March 12, 1989, shall satisfy the requirements of this subdivision if (i) when twenty-five percent (25%) of the units are occupied, eighty percent (80%) of the occupied units are occupied by at least one person 55 years or older, and thereafter (ii) eighty percent (80%) of all newly occupied units are occupied by at least one person 55 years or older until such time as eighty percent (80%) of all the units in the housing facility are occupied by at least one person 55 years of age or older.

Housing satisfies the requirements of subdivisions (2) and (3) of this subsection even though there are units occupied by employees of the housing facility who are under the minimum age or family members of the employees residing in the same unit who are under the minimum age, provided the employees perform substantial duties directly related to the management of the housing."

Sec. 5. G.S. 41A-7(b) reads as rewritten:

"(b) A complaint under subsection (a) shall be filed within one year after the alleged unlawful discriminatory housing practice occurred. A respondent may file an answer to the complaint against him within 10 days after receiving a copy of the complaint. With the leave of the ~~Council~~, Commission, which shall be granted whenever it would be reasonable and fair to do so, the complaint and the answer may be amended at any time. Complaints and answers shall be verified. The Commission shall make final administrative disposition of a complaint within one year of the date the complaint is filed, unless it is impracticable to do so. If the Commission is unable to do so, it shall notify the complainant and respondent, in writing, of the reasons for not doing so."

Sec. 6. G.S. 41A-7(g) reads as rewritten:

"(g) If the ~~Council~~ Commission finds reasonable grounds to believe that an unlawful discriminatory housing practice has occurred or is about to occur it shall proceed to try to eliminate or correct the discriminatory housing practice by informal conference, conciliation, or persuasion. Any ~~Each~~ conciliation agreement arising out of conciliation efforts by the ~~Council~~ Commission, whether reached before or after the Commission makes a determination of the complaint pursuant to subsection (e), shall be be:

- (1) ~~an~~ An agreement between the respondent and the complainant and shall be subject to the approval of the ~~Council~~ Commission. The ~~Council~~ Commission may also be a party to such conciliation ~~agreements~~ agreements; and
- (2) ~~Each conciliation agreement shall be made~~ Made public unless the complainant and respondent otherwise agree, and the ~~Council~~ Commission determines that disclosure is not required to further the purposes of this Chapter."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 1297

CHAPTER 980

AN ACT TO PROVIDE FOR A PROCEDURE WHEN THE COMPLETE REZONING OF A JURISDICTION INVOLVES "DOWN ZONING".

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-384 reads as rewritten:

"§ 160A-384. *Method of procedure.*

The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of the proposed classification by first class mail at the last addresses listed for such owners on the county tax abstracts; provided that this sentence does not apply in the case of a total rezoning of all property within the corporate boundaries of a municipality unless the rezoning involves zoning of parcels of land to less intense uses or 'down zoning' in which case notification to owners of those parcels shall be made by mail in accordance with this section. The person or persons mailing such notices shall certify to the City Council that fact, and such certificate shall be deemed conclusive in the absence of fraud."

Sec. 2. G.S. 153A-343 reads as rewritten:

"§ 153A-343. *Method of procedure.*

The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning

regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of the proposed classification by first class mail at the last addresses listed for such owners on the county tax abstracts; provided that this sentence does not apply in the case of a total rezoning of all property within the boundaries of a county unless the rezoning involves zoning of parcels of land to less intense uses or 'down zoning' in which case notification to owners of those parcels shall be made by mail in accordance with this section. The person or persons mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud."

Sec. 3. This act is effective October 1, 1990. This act shall not be construed to affect pending litigation.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 2067

CHAPTER 981

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED TO DETERMINE CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2.1 reads as rewritten:

"§ 105-2.1. *Internal Revenue Code definition.*

As used in this Article, the term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1989~~, January 1, 1990, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 2. G.S. 105-114 reads as rewritten:

"§ 105-114. *Nature of taxes; definitions.*

(a) **Nature of Taxes.** The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named. The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

- (1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of

the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and

- (2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which such corporations receive from the government and laws of this State in doing business in this State.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in such form of organization; and if the corporation is not organized under the laws of this State, payment of these taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article or schedule shall be for the fiscal year of the State in which the taxes become due; except that the taxes levied in G.S. 105-122 and G.S. 105-123 shall be for the income year of the corporation in which the taxes become due.

(b) Definitions. The following definitions apply in this Article:

- (1) ~~As used in this Article, the~~ The term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1989,~~ January 1, 1990, and includes any provisions enacted as of that date which become effective either before or after that date.
- (2) The term 'corporation' ~~as used in this Article~~ shall, unless the context clearly requires another interpretation, mean and include not only corporations but also associations or joint-stock companies and every other form of organization for pecuniary gain, having capital stock represented by shares, whether with or without par value, and having privileges not possessed by individuals or partnerships; and whether organized under, or without, statutory authority. The term 'corporation' ~~as used in this Article~~ shall also mean and include any electric membership corporation organized under Chapter 117, and any electric membership corporation, whether or not organized under the laws of this State, doing business within the State.
- (3) ~~The~~ When the term 'doing business' is used in this Article, it shall mean and include each and every act, power or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges acquired by the nature of such organizations whether the form of existence be corporate, associate, joint-stock company or common-law trust.

~~If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in such form of organization; and if the corporation is not organized under the laws of this State, payment of said taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article or schedule shall be for the fiscal year of the State in which said taxes become due; except, that the taxes levied in G.S. 105-122 and G.S. 105-123 shall be for the income year of the corporation in which such taxes become due. For purposes of this Article, the words~~

(4) The term 'income year' shall mean an income year as defined in G.S. 105-130.2(5)."

Sec. 3. G.S. 105-130.2(1) reads as rewritten:

"(1) 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1989,~~ January 1, 1990, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 4. G.S. 105-131(b)(1) reads as rewritten:

"(1) 'Code' means the Internal Revenue Code ~~of 1986,~~ as enacted as of ~~January 1, 1989,~~ January 1, 1990, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 5. G.S. 105-134.1(1) reads as rewritten:

"(1) Code. The Internal Revenue Code as enacted as of ~~January 1, 1989,~~ 1990, including any provisions enacted as of that date which become effective either before or after that date, but not including sections 63(c)(4) and 151(d)(3)."

Sec. 6. G.S. 105-163.1(11) reads as rewritten:

"(11) 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1989,~~ January 1, 1990, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 7. G.S. 105-212(f) reads as rewritten:

"(f) As used in this section, the term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1989,~~ January 1, 1990, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

The General Assembly of North Carolina enacts:

Section 1. Chapter 307 of the Public-Local Laws of 1935, as amended, is amended by adding a new section to read:

"Sec. 12.1. (a) Notwithstanding anything herein or elsewhere in the laws of this State to the contrary, so long as (i) there are no county bonds issued for the benefit of Cabarrus Memorial Hospital outstanding; (ii) there is no county tax levy for the direct benefit of the hospital; and (iii) the Executive Committee of the hospital operates Cabarrus Memorial Hospital as an acute care general hospital open to the general public free of discrimination based upon race, creed, color, sex or national origin and on a nonprofit basis, the provisions of Chapter 159 of the General Statutes of North Carolina relating to public hospitals, and any other provisions of the General Statutes relating to public hospitals, shall not be applicable to Cabarrus Memorial Hospital and its Executive Committee.

(b) As long as the conditions of subsection (a) of this section continue to be satisfied, the Executive Committee of Cabarrus Memorial Hospital may operate Cabarrus Memorial Hospital in the same manner as private nonprofit corporations operate acute care hospitals in this State without the limitations and restrictions applicable to public hospitals under the laws of this State; and that the Executive Committee may provide for the governance of the hospital in such manner as it deems in the best interest of the hospital."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 2132

CHAPTER 983

AN ACT TO ALLOW THE TOWN OF KERNERSVILLE TO DISPOSE OF CERTAIN REAL PROPERTY BY PRIVATE NEGOTIATION AND SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Kernersville may convey by negotiation and private sale, with or without monetary consideration, any or all of its rights, title, and interest in the described property to the East Forsyth Citizens for Human Resources, Inc., under such terms and conditions as the Town Board of Aldermen deems appropriate:

Being all of that 2.25 acre tract of land lying in Kernersville Township, Forsyth County, North Carolina; and bounded by natural boundaries and/or lands owned by and/or in possession of persons, as follows; on the north by Parkside Drive, on the east by Amp

Incorporated, and on the southwest by Norfolk-Southern Railway; said tract being particularly described by courses (according to the North Carolina Grid System) and distances according to a survey and plat prepared by the Town of Kernersville Public Works Department, dated January 8, 1990, to which reference is hereby made, as follows: Commencing at Town of Kernersville horizontal control monument "PERPETUAL", having North Carolina Grid System coordinates as per the North American Datum of 1927 of North 867,807.61 and East 1,681,717.54; thence South 79 deg. 50 min. 20 sec. West a distance of 419.37 feet to a 1" outside diameter set new iron pipe, 1" high, the northwesterly corner of Amp Incorporated (see Deed Book 1623 at Page 744 of the Forsyth County Registry) in the southerly right of way line of Parkside Drive, and being the true point of BEGINNING; thence with said Amp Incorporated (see also Deed Book 1043 Page 974 of said Registry) the following two (2) calls: (1) thence South 01 deg. 10 min. 00 sec. West a distance of 172.90 feet to a 1 3/4" outside diameter found existing iron pipe, 2" high; (2) thence South 15 deg. 05 min. 20 sec. West a distance of 144.83 feet to a 1" outside diameter found existing iron pipe, 2" high, in the northeasterly right of way line (fifty feet from centerline) of Norfolk-Southern Railway; thence with said northeasterly right of way line North 59 deg. 48 min. 50 sec. West a distance of 675.07 feet to a 1" outside diameter set new iron pipe, flush, in the southerly right of way line (thirty feet from centerline) of said Parkside Drive, at the cusp of a curve concave southerly and having a radius of 271.55 feet; thence with said southerly right of way line the following four (4) calls: (1) thence along said curve through a central angle of 27 deg. 14 min. 25 sec. (the long chord of said curve bears South 89 deg. 24 min. 50 sec. East a distance of 71.94 feet to a 1" outside diameter set new iron pipe, flush; (2) thence South 81 deg. 48 min. 00 sec. East a distance of 124.07 feet to a 1" outside diameter set new iron pipe, flush, at the beginning of a curve concave northerly and having a radius of 443.70 feet; (3) thence along said curve through a central angle of 07 deg. 37 min. (the long chord of said curve bears South 85 deg. 36 min. 10 sec. East a distance of 58.94 feet) to a 1" outside diameter set new iron pipe, flush; (4) thence South 89 deg. 25 min. 00 sec. East a distance of 371.27 feet to the true point of BEGINNING said 1" outside diameter set new iron pipe, 1" high.

The above described tract is subject to easements, agreements, and rights of way of record prior to the date of this instrument. It is particularly noted that a 16" water main in the possession of the Town of Kernersville crosses the above described tract, and that said water main shall have a herein stated easement width of twenty (20) feet, with ten (10) feet on each side of said water main.

FOR REFERENCE SEE: Deed Book 1468 at Page 879 of said Registry; see also Judgement recorded in Deed Book 1476 at Page 1142; see also Deed Book 1623 Page 747 of said Registry;

The above described tract is generally designated as being all of tax lots 39R and 114B, and a portion of tax lot 115D, all of tax block 5352 of Forsyth County Tax Maps, with property address of 402 Parkside Drive, Kernersville, N.C. 27284.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 2138

CHAPTER 984

AN ACT TO PROVIDE TRANSITIONAL ADJUSTMENTS RELATING TO SUBCHAPTER S CORPORATIONS, TO CORRECT AN ERROR THAT INADVERTENTLY DISALLOWED DEDUCTIONS FOR SOME MORTGAGE INTEREST PAYMENTS, TO PROVIDE ADDITIONAL TAX RELIEF FOR TAXPAYERS WITH DEPENDENTS WHO ARE PERMANENTLY AND TOTALLY DISABLED, TO ALLOW A TAX CREDIT FOR STATE INCOME TAXES PAID ON GOVERNMENT RETIREMENT BENEFITS RECEIVED IN 1988, TO PROVIDE THAT AN EXTENSION OF TIME FOR FILING AN INCOME OR FRANCHISE TAX RETURN IS NOT AN EXTENSION OF TIME FOR PAYING THE TAX, AND TO REDUCE THE THRESHOLD FOR PAYMENTS OF ESTIMATED CORPORATE INCOME TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-131.4 reads as rewritten:

"§ 105-131.4. *Carryforwards; carrybacks; loss limitation.*

(a) Carryforwards and carrybacks to and from an S Corporation shall be restricted in the manner provided in section 1371(b) of the Code.

(b) The aggregate amount of losses or deductions of an S Corporation taken into account by a shareholder pursuant to G.S. 105-131.1(b) may not exceed the combined adjusted bases, determined in accordance with G.S. 105-131.3, of the shareholder in the stock and indebtedness of the S Corporation.

(c) Any loss or deduction that is disallowed for a taxable period pursuant to subsection (b) of this section shall be treated as incurred by the corporation in the succeeding taxable period with respect to that shareholder.

- (d) (1) Any loss or deduction that is disallowed pursuant to subsection (b) of this section for the corporation's last taxable period as an S Corporation shall be treated as incurred by the shareholder on the last day of any post-termination transition period.
- (2) The aggregate amount of losses and deductions taken into account by a shareholder pursuant to subdivision (1) of this subsection may not exceed the adjusted basis of the shareholder in the stock of the corporation (determined in accordance with G.S. 105-131.3 at the close of the last day of any post-termination transition period and without regard to this subsection).

(e) Each shareholder's pro rata share of the reduction of an S Corporation's income because of the allowance of a carryforward loss to the S Corporation under this subsection shall be taken into account by the shareholder as a transitional adjustment under G.S. 105-134.7. Notwithstanding the provisions of subsection (a) of this section, an S Corporation that sustained a net economic loss in a taxable year beginning before January 1, 1989, may carry the loss forward to a taxable year beginning on or after January 1, 1989, and before July 1, 1991, and may deduct the loss in that year to one-half of the extent it could have carried forward and deducted the loss pursuant to G.S. 105-130.5(b)(4) and G.S. 105-130.8 if the S Corporation Income Tax Act had not become effective until taxable years beginning on or after July 1, 1991. Any loss carryforward allowed as a deduction by this subsection may not exceed one-half of the S Corporation's net income, as defined in the Code subject to the adjustments provided in G.S. 105-130.5 other than the adjustment provided in G.S. 105-130.5(b)(4), and is subject to the limitations provided in G.S. 105-131.4(b) and (d). Notwithstanding the provisions of G.S. 105-131.3, the basis of a shareholder in the stock of an S Corporation shall be adjusted for the shareholder's pro rata share of the carryforward loss allowed as a deduction to the S Corporation under this subsection. Notwithstanding the provisions of G.S. 105-131.6(c)(2), the accumulated adjustments account maintained for each resident shareholder shall be adjusted for the shareholder's pro rata share of the carryforward loss allowed as a deduction to the S Corporation under this subsection."

Sec. 2. G.S. 105-151.19 reads as rewritten:

"§ 105-151.19. *Credit for North Carolina dividends.*

There is allowed as a credit against the tax imposed by this Division an amount equal to six percent (6%) of the amount of dividends received by the taxpayer during the taxable year from stock issued by a qualified corporation, up to a maximum credit of three hundred

dollars (\$300.00) per taxpayer for the taxable year. A corporation is a qualified corporation if fifty percent (50%) or more of the dividends from stock issued by the corporation would be deductible by a corporate shareholder for the taxable year under the provisions of G.S. 105-130.7(1), (2), (3), (3a), or (5) except that no credit shall be allowed for dividends ~~issued with respect to~~ deemed distributable from earnings for a taxable period during which the corporation is an S Corporation subject to the provisions of Division I-S of this Article.

This credit applies only with respect to dividends received while the taxpayer was a resident of this State. In the case of a married couple filing a joint return where both spouses received dividends during the taxable year, the three hundred dollar (\$300.00) maximum applies separately to each spouse's dividends for a potential total credit of six hundred dollars (\$600.00) for the couple. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer."

Sec. 3. Notwithstanding any other provision of law, with respect to dividends received by a taxpayer from an S Corporation and included in the taxpayer's North Carolina taxable income under Division II of Article 4 of Chapter 105 of the General Statutes for the taxpayer's 1989 taxable year, if (i) the dividends were distributed during the corporation's 1988 taxable year which began on or after January 2, 1988, and ended on or after January 1, 1989, or (ii) the dividends were distributed before October 1, 1989, then the three hundred dollar (\$300.00) limitation in G.S. 105-151.19 shall not apply and any credit otherwise allowable with respect to these dividends shall be allowed without regard to the three hundred dollar (\$300.00) limitation. No additional credit is allowed under G.S. 105-151.19 for dividends distributed on or after October 1, 1989, from an S Corporation during its 1989 taxable year, to the extent the taxpayer's total credit under G.S. 105-151.19 for the taxable year exceeds three hundred dollars (\$300.00).

Sec. 4. G.S. 105-134.6(b) reads as rewritten:

"(b) Deductions. The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in gross income:

- (1) Interest upon the obligations of (i) the United States or its possessions, (ii) this State or a political subdivision of this State, or (iii) a nonprofit educational institution organized or chartered under the laws of this State.
- (2) Interest upon obligations and gain from the disposition of obligations to the extent the interest or gain is exempt from tax under the laws of this State.

- (3) Benefits received under Title II of the Social Security Act and amounts received from retirement annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.
- (4) Any amount not to exceed one thousand five hundred dollars (\$1,500) received by the taxpayer during the taxable year as compensation for the performance of duties as a member of the North Carolina organized militia, the national guard as defined in G.S. 127A-3.
- (5) Refunds of State, local, and foreign income taxes included in the taxpayer's gross income.
- (6)
 - a. An amount, not to exceed four thousand dollars (\$4,000), equal to the sum of the amount calculated in subparagraph b. plus the amount calculated in subparagraph c.
 - b. The amount calculated in this subparagraph is the amount received during the taxable year from one or more state, local, or federal government retirement plans.
 - c. The amount calculated in this subparagraph is the amount received during the taxable year from one or more retirement plans other than state, local, or federal government retirement plans, not to exceed a total of two thousand dollars (\$2,000) in any taxable year.
 - d. In the case of a married couple filing a joint return where both spouses received retirement benefits during the taxable year, the maximum dollar amounts provided in this subdivision for various types of retirement benefits apply separately to each spouse's benefits.
- (7) The amount of inheritance tax attributable to an item of income in respect of a decedent required to be included in gross income under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7. The amount of inheritance tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance tax paid under Article I of this Chapter on property transferred to a beneficiary by a decedent exceeds the amount of inheritance tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent. (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7.

and the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

- (8) The amount by which the taxpayer's mortgage interest deduction under the Code was reduced pursuant to section 163(g) of the Code."

Sec. 5. G.S. 105-151.18 reads as rewritten:

" § 105-151.18. *Credit for the disabled.*

(a) Disabled Taxpayer. A ~~person~~ taxpayer who (i) is retired on disability, (ii) at the time of retirement, was permanently and totally disabled, ~~disabled as defined in section 22 of the Code,~~ and (iii) claims a federal income tax credit under section 22 of the Code for the taxable year, is allowed as a credit against the tax imposed by this Division an amount equal to one-third of the amount of the federal income tax credit for which ~~he~~ the taxpayer is eligible under section 22 of the Code.

(b) Disabled Dependent. If a dependent or spouse for whom a taxpayer is allowed an exemption under the Code is permanently and totally disabled, the taxpayer is allowed a credit against the tax imposed by this Division. In order to claim the credit allowed by this subsection, the taxpayer must attach to the tax return on which the credit is claimed a statement from a physician or local health department certifying that the dependent or spouse for whom the credit is claimed is permanently and totally disabled, as defined in this section. The amount of the credit allowed shall be determined as follows: For a taxpayer whose North Carolina adjusted gross income does not exceed the appropriate income amount provided in the table below, based on the taxpayer's filing status, the credit allowed is the appropriate initial credit provided in the table below. For a taxpayer whose North Carolina adjusted gross income does exceed the appropriate income amount, the credit allowed is the appropriate initial credit reduced by four dollars (\$4.00) for every one thousand dollars (\$1,000) by which the taxpayer's North Carolina adjusted gross income exceeds the appropriate income amount.

<u>Filing Status</u>	<u>Initial Credit</u>	<u>Income Amount</u>
<u>Head of Household</u>	<u>\$64.00</u>	<u>\$16,000</u>

<u>Surviving Spouse or Joint Return</u>	<u>\$80.00</u>	<u>\$20,000</u>
<u>Single</u>	<u>\$48.00</u>	<u>\$12,000</u>
<u>Married Filing Separately</u>	<u>\$40.00</u>	<u>\$10,000</u>

(c) Definitions. The following definitions apply in this section:

- (1) North Carolina Adjusted Gross Income. Adjusted gross income, as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7.
- (2) Permanently and Totally Disabled. Unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For the purpose of this section, a minor is permanently and totally disabled if the impact of the impairment on the minor's ability to function is equivalent in severity to that which would make an adult unable to engage in any substantial gainful activity.

(d) Limitations. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer."

Sec. 6. Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding after G.S. 105-151.19 a new section to read:

" § 105-151.20. Credit for tax paid on certain government retirement benefits.

A taxpayer who received government retirement benefits during the 1988 tax year may claim a credit against the tax imposed by this Division equal to the amount by which the tax under this Division paid by the taxpayer for the 1988 tax year would have been reduced if none of the taxpayer's government retirement benefits had been included in the taxpayer's taxable income. If a taxpayer received a refund of any tax paid under this Division on government retirement benefits for the 1988 tax year, the amount of the refund reduces the amount of the credit allowed under this section.

As used in this section, the term 'government retirement benefits' means retirement benefits received from one or more state, local, or

federal government retirement plans. As used in this section, the term '1988 tax year' means the taxpayer's taxable year beginning on a day in 1988.

The credit allowed under this section shall be taken in equal installments over the taxpayer's first three taxable years beginning on or after January 1, 1990. The credit allowed under this section may not exceed the amount of tax imposed by this Division reduced by the sum of all credits allowed against the tax, except payments of tax made by or on behalf of the taxpayer."

Sec. 7. G.S. 105-129 reads as rewritten:

" § 105-129. Extension of time for filing returns.

(a) The return required by this Article or schedule shall be due on or before the dates specified unless written application for extension of time in which to file, containing reasons therefor, is made to the Secretary of Revenue grants an extension on or before the due date of such the return. The Secretary of Revenue for good cause may extend the time for filing any return under this Article or schedule, provided interest at the rate established pursuant to G.S. 105-241.1(i) is paid upon the total amount of tax due. Article. A taxpayer requesting an extension of time for filing shall, on or before the date the return is due, submit an application for an extension of time for filing on a form prescribed by the Secretary and pay the full amount of the tax anticipated to be due."

Sec. 8. G.S. 105-130.17(d) reads as rewritten:

"(d) In case of sickness, absence, or other disability or whenever in his judgment good cause exists, the Secretary may allow further time for filing returns. A taxpayer requesting an extension of time for filing shall, on or before the date the return is due, submit an application for an extension of time for filing on a form prescribed by the Secretary and pay the full amount of the tax anticipated to be due."

Sec. 9. G.S. 105-130.19(a) reads as rewritten:

"(a) Except as provided in Article 4C of this Chapter, the full amount of the tax payable as shown on the face of the return shall be paid to the Secretary of Revenue at the office where the return is filed and within the time fixed by law for filing the return. An extension of time granted for filing the return under G.S. 105-130.17(d) is not an extension of time for payment of the full amount of the tax payable."

Sec. 10. G.S. 105-155 reads as rewritten:

" § 105-155. Time and place of filing returns.

(a) Returns shall be in such forms as the Secretary may from time to time prescribe, the forms prescribed by the Secretary and shall be filed with the Secretary at his the Secretary's main office or at any branch office. The return of every taxpayer reporting on a calendar year basis shall be filed on or before the fifteenth day of April in each

year, and the return of every taxpayer reporting on a fiscal year basis shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. ~~In case of sickness, absence, or other disability or whenever in his judgment good cause exists, the~~

(b) ~~The Secretary may~~ may, for good cause, allow further time for filing returns. A taxpayer requesting an extension of time for filing shall, on or before the date the return is due, submit an application for an extension of time for filing on a form prescribed by the Secretary and pay the full amount of the tax anticipated to be due.

(c) There shall be annexed to the return the affirmation of the taxpayer making the return in the following form: 'Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. (If prepared by a person other than the taxpayer, that the preparer's affirmation is based on all information of which the preparer has any knowledge.)' The Secretary shall prepare blank forms for the returns, distribute them throughout the State, and furnish them upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of filing a return required by this Division."

Sec. 11. G.S. 105-157 reads as rewritten:

" § 105-157. *Time and place of payment of tax.*

(a) Except as otherwise provided in this section and in Article 4A of this Chapter, the full amount of the tax payable as shown on the face of the return shall be paid to the Secretary at the office where the return is filed at the time fixed by law for filing the return. An extension of time granted for filing the return under G.S. 105-155 is not an extension of time for payment of the full amount of the tax payable. If the amount shown to be due is less than one dollar (\$1.00), no payment need be made.

(b) The tax may be paid with uncertified check during such time and under such regulations as the Secretary may prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom the check was tendered shall remain liable for the payment of the tax and for all legal penalties the same as if the check had not been tendered."

Sec. 12. G.S. 105-160.6 reads as rewritten:

" § 105-160.6. *Time and place of filing returns.*

Returns required under the provisions of G.S. 105-160.5 shall be in such form as the Secretary may prescribe, and shall be filed with the Secretary at the Secretary's main office or at any branch office which the Secretary may establish. The return of every fiduciary reporting on a calendar-year basis shall be filed on or before the 15th day of April in each year, and the return of every fiduciary reporting

on a fiscal year basis shall be filed on or before the 15th day of the fourth month following the close of the fiscal year. ~~In the case of sickness, absence, or other disability or whenever in his judgment good cause exists, the~~ The Secretary may for good cause allow further time for filing a return. A person requesting an extension of time for filing shall, on or before the date the return is due, submit an application for an extension of time for filing on a form prescribed by the Secretary and pay the full amount of the tax anticipated to be due."

Sec. 13. G.S. 105-160.7(a) reads as rewritten:

"(a) The full amount of the tax payable as shown on the face of the return shall be paid to the Secretary at the office where the return is filed at the time fixed by law for filing the return. However, if the amount shown to be due after all credits is less than one dollar (\$1.00), no payment need be made. An extension of time granted for filing the return under G.S. 105-160.6 is not an extension of time for payment of the full amount of the tax payable."

Sec. 14. G.S. 105-263 reads as rewritten:

"§ 105-263. *Time for filing reports extended.*

~~The Secretary of Revenue, when he deems the same necessary or advisable, may~~ Revenue may, in his discretion, extend to any person, firm, or corporation or public utility corporation, or public utility a further specified time within which to file any report required by law to be filed with the Secretary of Revenue, Revenue. in which event the attaching or taking effect of any penalty for failure to file such report or to pay any tax or fee shall be extended or postponed accordingly. An extension of time for filing a report granted under G.S. 105-129, 105-130.17, 105-155, or 105-160.6 is not an extension of time for payment of the full amount of the tax payable or for the attachment of any penalty for failure to pay the tax. Any other extension of time for filing a report is also an extension of time for attachment of any penalty for failure to file a report or to pay any tax or fee. Interest, at the rate established pursuant to G.S. 105-241.1(i), from the time the report or return was originally required to be filed to the time of payment shall be added to and paid with any tax that might be due on returns so extended."

Sec. 15. G.S. 105-163.38 reads as rewritten:

"§ 105-163.38. *Definitions.*

As used in this Article, The following definitions apply in this Article, unless the context requires otherwise:

- (1) "Corporation" means a corporation that has a reasonably estimated tax liability of at least five thousand dollars (\$5,000). The term "corporation" includes joint-stock companies or associations that meet these requirements, Code. The Internal Revenue Code as enacted as of January

- 1, 1990, including any provisions enacted as of that date which become effective either before or after that date.
- (1a) Corporation. Defined in section 7701 of the Code.
- (2) ~~"Estimated tax" means the~~ Estimated tax. The amount of income tax the corporation estimates as the amount imposed by Article 4 for the taxable year. ~~The appropriate percentage of estimated tax payable during the taxable year shall be determined by the following table:~~
- | <u>For Taxable Years Beginning On and After:</u> | | <u>Percentages</u> |
|--|--|--------------------|
| <u>June 25, 1983, and before June 25, 1984</u> | | <u>25%</u> |
| <u>June 25, 1984, and before June 25, 1985</u> | | <u>50%</u> |
| <u>June 25, 1985, and before June 25, 1986</u> | | <u>75%</u> |
| <u>June 25, 1986</u> | | <u>100%</u> |
- (3) ~~"Fiscal year" means an~~ Fiscal year. An accounting period of 12 months ending on the last day of any month other than December.
- (4) ~~"Secretary" means the~~ Secretary. The Secretary of Revenue.
- (5) ~~"Taxable year" means the~~ Taxable year. The calendar year or fiscal year used as a basis to determine net income under Article 4. If no fiscal year has been established, 'fiscal year' means the calendar year. In the case of a return made for a fractional part of the year under Article 4, or under rules prescribed by the Secretary, 'taxable year' means the period for which the return is made."

Sec. 16. G.S. 105-163.40 reads as rewritten:

" § 105-163.40. *Time for submitting declaration; time and method for paying estimated tax.*

(a) **Due Dates of Declarations.** -- Declarations of estimated tax are due at the same time as the corporation's first installment payment. Installment payments are due as follows:

- (1) If, before the 1st day of the 4th month of the taxable year, the corporation's estimated tax equals or exceeds ~~five thousand dollars (\$5,000),~~ five hundred dollars (\$500.00), the corporation shall pay the estimated tax in four equal installments on or before the 15th day of the 4th, 6th, 9th and 12th months of the taxable year.
- (2) If, after the last day of the 3rd month and before the 1st day of the 6th month of the taxable year, the corporation's estimated tax equals or exceeds ~~five thousand dollars (\$5,000),~~ five hundred dollars (\$500.00), the corporation shall pay the estimated tax in three equal installments on or before the 15th day of the 6th, 9th and 12th months of the taxable year.

- (3) If, after the last day of the 5th month and before the 1st day of the 9th month of the taxable year, the corporation's estimated tax equals or exceeds ~~five thousand dollars (\$5,000)~~, five hundred dollars (\$500.00), the corporation shall pay the estimated tax in two equal installments on or before the 15th day of the 9th and 12th months.
- (4) If, after the last day of the 8th month and before the 1st day of the 12th month of the taxable year, the corporation's estimated tax equals or exceeds ~~five thousand dollars (\$5,000)~~, five hundred dollars (\$500.00), the corporation shall pay the estimated tax on or before the 15th day of the 12th month of the taxable year.

(b) **Payment of Estimated Tax When Declaration Amended.** -- When a corporation submits an amended declaration after making one or more installment payments on its estimated tax, the amount of each remaining installment shall be the amount that would have been payable if the estimate in the amended declaration was the original estimate, increased or decreased as appropriate by the amount computed by dividing:

- (1) The absolute value of the difference between:
 - a. The amount paid and
 - b. The amount that would have been paid if the estimate in the amended declaration was the original estimate by
- (2) The number of remaining installments.

(c) **Short Taxable Year.** -- Payment of estimated tax for taxable years of less than 12 months shall be made in accordance with rules promulgated by the Secretary."

Sec. 17. The current operations budget that will likely be adopted by the 1990 Session of the General Assembly will contain \$2.8 million of operating budget reductions for the Department of Revenue. This reduction would seriously undermine the actions of the 1989 General Assembly to modernize the State's tax enforcement efforts. In addition, the 1989-91 General Fund revenue estimates used during the budget process are based on projected revenues from the enactment of the modernization program. Thus, the proposed budget cuts will have a direct negative impact on 1990-91 revenue collections and will exacerbate the recognized 1991 Session General Fund shortfall.

It is the intent of the General Assembly that the proceeds of this act shall be used to maintain the integrity of the 1989 Session action modernizing the State's tax enforcement program.

Sec. 18. Section 1 of this act is effective retroactively for taxable years beginning on or after January 1, 1989, and shall expire for taxable years beginning on or after July 1, 1991. Sections 5 and 6

of this act are effective for taxable years beginning on or after January 1, 1990. Sections 7 through 14 of this act are effective upon ratification and apply to taxable years ending on or after the date of ratification. Sections 15 and 16 of this act are effective for taxable years beginning on or after August 1, 1990. The remainder of this act is effective retroactively for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 2258

CHAPTER 985

AN ACT TO LEVY A ONE-TIME ASSESSMENT ON INSURERS
THAT SUPPORT THE MUTUAL WORKERS' COMPENSATION
SECURITY FUND.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that because of the magnitude of recent insolvencies of mutual insurers domiciled in other states and because mutual insurers had written significant amounts of workers' compensation insurance in this State, the level of money in The Mutual Workers' Compensation Security Fund is sufficiently low so that payments to injured workers and their health care providers will have to be suspended. The General Assembly declares that it is in the public interest to provide for a one-time assessment on all mutual insurers writing workers' compensation in the State in order to bring this Fund to an acceptable level and to avoid adverse economic effects on workers who are entitled to payments under the Workers' Compensation Act.

Sec. 2. Article 3 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-116.1. Supplemental assessment for The Mutual Workers' Compensation Security Fund.

For the privilege of carrying on the business of workers' compensation insurance in this State, every mutual carrier shall pay into the mutual fund a sum equal to two percent (2%) of its net written workers' compensation premiums for calendar year 1989 only. This assessment is in addition to the contribution required in G.S. 97-116."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

AN ACT TO MODIFY THE SCHOOL FUNDING PROCEDURES FOR ROBESON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 13 of Chapter 605, Session Laws of 1987, reads as rewritten:

"Sec. 13. (a) The Robeson County Board of Commissioners shall provide local funding to the Public Schools of Robeson County for the following school years at at least the designated percentage of the average local funding per ADM in the remainder of the State, in accordance with the most recent figures available from the State Board of Education as of January 1 of the year in which the budget is adopted:

1989-90	70%
1990-91	75%
1991-92 and thereafter	80%.

(b) Notwithstanding the provisions of subsection (a) of this section, the Robeson County Board of Commissioners for fiscal year 1990-91 shall provide local current expense funding to the Public Schools of Robeson County at at least seventy percent (70%) of the average local funding per ADM in the State based on appropriations, in accordance with the most recent figures available from the State Board of Education as of January 1 of the year in which the budget is adopted. The progressive percentage increases provided for in subsection (a) of this section shall not begin until fiscal year 1991-92."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

AN ACT TO ESTABLISH FEES FOR PROCESSING APPLICATIONS FOR PERMITS AND TO IMPROVE PERMIT PROCESSING AND COMPLIANCE UNDER THE COASTAL AREA MANAGEMENT ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-119(a) reads as rewritten:

"(a) Any person required to obtain a permit under this Part shall file with the Secretary and (in the case of a permit sought from a city or county) with the designated local official an application for a permit in accordance with the form and content designated by the Secretary

and approved by the Commission. The applicant must submit with the application a check or money order payable to the Department or the city or county, as the case may be, constituting a reasonable fee ~~(not to exceed twenty-five dollars (\$25.00) for a minor development permit and not to exceed one hundred dollars (\$100.00) for a major development permit)~~ set by the Commission to cover the administrative costs in processing the said application, pursuant to G.S. 113A-119.1."

Sec. 2. Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-119.1. *Permit Fees.*

(a) The Commission shall have the power to establish a graduated fee schedule for the processing of applications for permits, renewal of permits, modification of permits, or transfers of permits issued pursuant to this Article. In determining the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing such applications and for related compliance activities and the complexity of the development sought to be undertaken for which a permit is required under this Article. The fee to be charged for processing an application may not exceed four hundred dollars (\$400.00). The total funds collected from fees authorized by the Commission pursuant to this section in any fiscal year shall not exceed thirty-three and one-third percent (33 1/3%) of the total personnel and administrative costs incurred by the Department for permit processing and compliance programs within the Division of Coastal Area Management.

(b) Fees collected under this section shall be credited to the General Fund and may be used to: (i) defray the expenses of any project or program, including educational programs, supporting the permitting and compliance activities under this Article and (ii) establish additional permanent positions, under the Personnel Act, for permitting and compliance activities under this Article.

(c) The Department shall make an annual report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the cost of the permit program authorized under this Article. The report shall include the fees established and collected under this section and any other information requested by the General Assembly."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 2398

CHAPTER 988

AN ACT TO PROVIDE FOR THE LICENSURE OF CREMATORY OPERATORS AND TO ESTABLISH THE CREMATORY AUTHORITY WITHIN THE BOARD OF MORTUARY SCIENCE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 13C.

"Cremations.

" § 90-210.40. Short title.

This Article shall be known and may be cited as the North Carolina Crematory Act.

" § 90-210.41. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) 'Authorizing agent' means a person legally entitled to order the cremation of human remains. An authorizing agent shall be, in order of priority, a spouse, an adult child, a parent, any adult sibling, guardian or close relation of the deceased. In the case of indigents or any other individuals whose final disposition is the responsibility of the State, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the authorizing agent. In the case of individuals whose death occurred in a nursing home or other private institution, and in which the institution is charged with making arrangements for the final disposition of the deceased, a representative of the institution, if legally authorized, may serve as the authorizing agent.
- (2) 'Board' means the North Carolina State Board of Mortuary Science.
- (3) 'Casket' means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal or other rigid material and ornamented and lined with fabric.
- (4) 'Closed container' means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of cremated remains or the entrance of foreign material.
- (5) 'Cremated remains' means all human remains recovered after the completion of the cremation process, including

- pulverization which leaves only bone fragments reduced to unidentifiable dimensions.
- (6) 'Cremation' means the technical process, using heat, that reduces human remains to bone fragments.
- (7) 'Cremation chamber' means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.
- (8) 'Cremation container' means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet all of the standards established by the rules adopted by the Board.
- (9) 'Crematory' means the building or portion of a building that houses the cremation chamber and that may house the holding facility, business office or other part of the crematory business. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.
- (10) 'Crematory authority' means the North Carolina Crematory Authority.
- (11) 'Crematory operator' means the legal entity which is licensed by the Board to operate a crematory and perform cremations.
- (12) 'Holding facility' means an area within or adjacent to the crematory, designated for the retention of human remains prior to cremation. A holding facility must comply with any applicable public health laws and rules and must meet all of the standards established by the rules adopted by the Board.
- (13) 'Human remains' means the body of a deceased person, or part of a body or limb that has been removed from a living or deceased person.
- (14) 'Niche' means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.
- (15) 'Scattering area' means a designated area for the scattering of cremated remains.
- (16) 'Temporary container' means a temporary receptacle for cremated remains, usually made of cardboard, plastic film or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.
- (17) 'Urn' means a receptacle designed to permanently encase the cremated remains.

" § 90-210.42. Crematory Authority established.

(a) The North Carolina Crematory Authority is established as a Committee within the Board. The Crematory Authority shall suggest rules to the Board for the carrying out and enforcement of the provisions of this Article.

(b) The Crematory Authority shall initially consist of five members appointed by the Governor and two members of the Board appointed by the Board. The Governor may consider a list of recommendations from the Cremation Association of North Carolina.

(c) The initial terms of the members of the Crematory Authority shall be staggered by the appointing authorities so that the terms of three members (two of which shall be appointees of the Governor) expire December 31, 1991, the terms of two members (both of which shall be appointees of the Governor) expire December 31, 1992, and the terms of the remaining two members (one of which shall be an appointee of the Governor) expire December 31, 1993.

As the terms of the members appointed by the Governor expire, their successors shall be elected from among a list of nominees in an election conducted by the Board in which all licensed crematory operators are eligible to vote. The Board may conduct the election for members of the Crematory Authority simultaneously with the election for members of the Board or at any other time. The Board shall prescribe the procedures and establish the time and date for nominations and elections to the Crematory Authority. A nominee who receives a majority of the votes cast shall be declared elected. The Board shall appoint the successors to the two positions for which it makes initial appointments pursuant to this section.

The terms of the elected members of the Crematory Authority shall be three years. The terms of the members appointed by the Board, including the members initially appointed pursuant to this subsection, shall be coterminous with their terms on the Board. Any vacancy occurring in an elective seat shall be filled for the unexpired term by majority vote of the remaining members of the Crematory Authority. Any vacancy occurring in a seat appointed by the Governor shall be filled by the Governor. Any vacancy occurring in a seat appointed by the Board shall be filled by the Board.

(d) The members of the Crematory Authority shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 93B-5 for all time actually spent upon the business of the Crematory Authority. All expenses, salaries and per diem provided for in this Article shall be paid from funds received under the provisions of this Article and Article 13A and shall in no manner be an expense to the State.

(e) The Crematory Authority shall select from its members a chairman, a vice chairman and a secretary who shall serve for one year or until their successors are elected and qualified. No two offices may be held by the same person. The Crematory Authority, with the concurrence of the Board, shall have the authority to engage adequate staff as deemed necessary to perform its duties.

(f) The Crematory Authority shall hold at least one meeting in each year. In addition, the Crematory Authority may meet as often as the proper and efficient discharge of its duties shall require. Five members shall constitute a quorum.

" § 90-210.43. Licensing and inspection.

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity may erect, maintain and conduct a crematory in this State and may provide the necessary appliances and facilities for the cremation of human remains, provided that such person has secured a license as a crematory operator in accordance with the provisions of this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning regulations.

(c) Application for a license as a crematory operator shall be made on forms furnished and prescribed by the Board. The Board shall examine the premises and structure to be used as a crematory and shall issue a license to the crematory operator if the applicant meets all the requirements and standards of the Board and the requirements of this Article. In the event of a change of ownership of a crematory, at least 30 days prior to the change the new owners shall provide the Board with the name and address of the new owners.

(d) Every application for licensure shall identify the individual who is responsible for overseeing the management and operation of the crematory. The crematory operator shall keep the Board informed at all times of the name and address of the manager.

(e) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this Article.

(f) Whenever the Board finds that an owner, partner or officer of a crematory operator or an applicant to become a crematory operator, or that any agent or employee of a crematory operator or an applicant to become a crematory operator, with the direct or implied permission of such owner, partner or officer, has violated any provision of this Article, or is guilty of any of the following acts, and when the Board

also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with the procedures of Chapter 150B:

- (1) Conviction of a felony or a crime involving fraud or moral turpitude;
- (2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of cremation;
- (3) False or misleading advertising;
- (4) Gross immorality, including being under the influence of alcohol or drugs while performing cremation services;
- (5) Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been cremated or otherwise disposed of;
- (6) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the Board;
- (7) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
- (8) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in G.S. 90-210.47(e);
- (9) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

(g) The Board and Crematory Authority may hold hearings in accordance with the provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly by the Board and the Crematory Authority. The Board and the Crematory Authority shall jointly constitute an 'agency' under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory operators and to enforce as provided by law the provisions of this Article and the rules adopted hereunder.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation or proceeding conducted by it or conducted jointly with the Crematory Authority. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the President of the Board for service in the same manner as process issued by any

court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

" § 90-210.44. Authorization and record keeping.

The Board shall establish requirements for record keeping and authorizations, and it shall be a violation of this Article for any crematory operator to fail to comply with the requirements.

" § 90-210.45. Cremation procedures.

(a) No human body shall be cremated before the crematory operator receives a death certificate signed by the attending physician or an authorization for cremation signed by a medical examiner.

(b) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred. In the event such death comes under the jurisdiction of the medical examiner, the human remains shall not be received by the crematory operator until authorization to cremate has been received in writing from the medical examiner of the county in which the death occurred. In the event the crematory operator is authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable.

(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber. Relatives of the deceased, the authorizing agent, medical examiners and law enforcement officers in the execution of their duties shall be authorized to have access to the holding facility and crematory facility.

(d) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(e) Crematory operators shall comply with standards established by the Board for the reduction and pulverization of human remains by the cremation process.

" § 90-210.46. Disposition of cremated remains.

(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. A copy of this statement shall be retained by the crematory operator.

(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of

cremation, the authorizing agent or his representative has not specified the ultimate disposition or claimed the cremated remains, the crematory operator or the person in possession of the cremated remains may dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory operator for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making such disposition. Upon disposing of cremated remains in accordance with this section, the crematory operator or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains.

(c) In addition to the disposal of cremated remains in a crypt, niche, grave, or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea or other public waterways pursuant to subsection (f) of this section, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of by the crematory operator on private property, other than dedicated cemetery property, the authorizing agent shall provide the crematory operator with the written consent of the property owner.

(d) Except with the express written permission of the authorizing agent no person may:

- (1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This subdivision shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.
- (2) Place cremated remains of more than one person in the same closed container. This subdivision shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person.

(e) Cremated remains shall be delivered by the crematory operator to the individual specified by the authorizing agent on the cremation authorization form. The representative of the crematory operator and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time, and place of the receipt. After this delivery, the cremated remains may be transported in any manner in this State, without a permit, and disposed of in accordance with the provisions of this Article.

(f) Cremated remains may be scattered over uninhabited public land, a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection (c) of this section. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered.

" § 90-210.47. Liability.

(a) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority to order such cremation.

(b) A crematory operator shall have authority to cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory operator that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization.

(c) A crematory operator shall not be responsible or liable for any valuables delivered to the crematory operator with human remains.

(d) A crematory operator shall not be liable for refusing to accept a body or to perform a cremation until it receives a court order or other suitable confirmation that a dispute has been settled if:

- (1) It is aware of any dispute concerning the cremation of human remains;
- (2) It has a reasonable basis for questioning any of the representations made by the authorizing agent; or
- (3) For any other lawful reason.

(e) If a crematory operator is aware of any dispute concerning the release or disposition of the cremated remains, the crematory operator may refuse to release the cremated remains until the dispute has been resolved or the crematory operator has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory operator shall not be liable for refusing to release or dispose of cremated remains in accordance with this subsection.

" § 90-210.48. Fees.

(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory operators and applicants:

<u>(1) Licensee application fee.</u>	<u>\$400.00</u>
<u>(2) Annual renewal fee.</u>	<u>150.00</u>
<u>(3) Late renewal penalty.</u>	<u>75.00</u>
<u>(4) Re-inspection fee.</u>	<u>100.00</u>
<u>(5) Per cremation fee.</u>	<u>10.00.</u>

(b) The funds collected pursuant to this Article shall become part of the general fund of the Board. The cost of the maintenance of the Crematory Authority shall be deemed a general expense of the Board. The Board shall keep an accurate accounting of all the receipts and expenditures made pursuant to this Article and shall provide a current report of such to the Crematory Authority biannually.

" § 90-210.49. Crematory operator authority.

(a) A crematory operator may employ a licensed funeral director for the purpose of arranging cremations with the general public, transporting human remains to the crematory, and processing all necessary paper work. Nothing in this provision may be construed to require a licensed funeral director to perform any functions not otherwise required by law to be performed by a licensed funeral director.

(b) A crematory operator may adopt reasonable rules consistent with this Article for the management and operation of a crematory. Nothing in this subsection may be construed to prevent a crematory operator from adopting rules which are more stringent than the provisions of this Article.

(c) Nothing in this Article shall prohibit or require the performance of cremations by crematory operators for or directly with the public, or exclusively for or through licensed funeral directors.

(d) Nothing in this Article may be construed to prohibit a crematory operator from transporting human remains.

(e) Nothing in this Article may be construed to relieve the holder of a license issued hereunder from obtaining any other licenses or permits required by law.

" § 90-210.50. Rulemaking, applicability, violations, and prohibitions of Article.

(a) The Board is authorized to adopt and promulgate such rules for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States. The Board shall adopt rules only after consideration of the Crematory Authority's suggested rules pursuant to G.S. 90-210.42(a). The Board may perform such other acts and exercise such other powers and duties as may be provided in this Article, in Article 13A of this Chapter, and otherwise by law and as may be necessary to carry out the powers herein conferred.

(b) The provisions of this Article shall not apply to the cremation of human remains and medical waste performed by the North Carolina Anatomical Commission, licensed hospitals and medical schools, and the office of the Chief Medical Examiner when the disposition of such human remains and medical waste is the legal responsibility of said institutions.

(c) A violation of any of the provisions of this Article is a misdemeanor punishable by imprisonment for up to six months and a fine up to one thousand dollars (\$1,000).

(d) No person, firm, or corporation may request or authorize cremation or cremate a dead human body when he has information indicating a crime or violence of any sort in connection with the cause of death unless such information has been conveyed to the State or county medical examiner and permission from the State or county medical examiner to cremate has thereafter been obtained."

Sec. 2. This act is effective upon ratification, except that (i) no license shall be required to operate a crematory prior to January 1, 1991 and (ii) G.S. 90-210.50(c) shall become effective October 1, 1990 and shall apply only to violations occurring on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 2073

CHAPTER 989

AN ACT TO ALLOW A SALES TAX EXEMPTION FOR FUEL USED BY A SMALL POWER PRODUCER TO GENERATE ELECTRICITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(8a) Sales to a small power production facility, as defined in 16 U.S.C. § 796(17)(A), of fuel used by the facility to generate electricity."

Sec. 2. This act shall become effective July 1, 1991.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.B. 1447

CHAPTER 990

AN ACT TO REPEAL THE ANNEXATION ORDINANCE OF THE TOWN OF ANDREWS.

The General Assembly of North Carolina enacts:

Section 1. The operation of an annexation ordinance of the Town of Andrews, which was affirmed by the North Carolina Court of Appeals in the case of *Adams v. Town of Andrews*, in an opinion filed October 3, 1989, is repealed.

Sec. 2. This act does not affect liability for prorated property taxes levied for the 1989-90 fiscal year and payable as provided by G.S. 160A-58.10.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 345

CHAPTER 991

AN ACT TO CONSOLIDATE INTO ONE FORM ALL ABSENTEE
BALLOT APPLICATION FORMS AND TO MAKE OTHER
CHANGES IN THE LAW AFFECTING ABSENTEE BALLOTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-227 reads as rewritten:

" § 163-227. *State Board to prescribe forms of applications— form of application for absentee ballots; county to secure.*

(a) Applications for Absentee Ballots Generally. -- A voter falling in any one of the categories defined in G.S. 163-226, 163-226.1 or 163-226.2 may apply for absentee ballots not earlier than 60 days prior to the statewide, county or municipal election in which he seeks to vote and not later than 5:00 P.M. on the Tuesday before that election. Subject to all other provisions contained in this Article, a voter applying for an absentee ballot shall complete the ~~appropriate application—~~ standard application form to be secured by the county board of elections, ~~lettered A, B, C, or OS,~~ as designed and prescribed by the State Board of Elections, ~~and—~~ The form shall contain lines to be checked off by each of the kinds of voters specified below:

- (1) ~~Application A shall be completed by a~~ A voter expecting to be absent from the county of his residence all day on the day of the specified election. (G.S. 163-226(a)(1)).
- (2) ~~Application B shall be completed by a~~ A voter who is unable to be present at the voting place to vote in person on the day of the specified election because of his sickness or other physical disability occurring before 5:00 P.M. on the Tuesday prior to the date of the specified election. (G.S. 163-226(a)(2)). ~~Application B shall be printed on the reverse side of Application A.~~
- (3) ~~Application C shall be completed by a~~ A voter who is unable to be present at the voting place to vote in person on the day of the specified election because of his sickness or other physical disability occurring since 5:00 P.M. on the

Tuesday prior to the date of the specified election. (G.S. 163-226(a)(2)).

- (4) ~~Application OS shall be completed by a~~ A voter expecting to be absent from the county, or due to emergency disability will be unable to vote in person, or a person who qualifies under G.S. 163-226(a)(4), and who, in lieu of making application by mail, wishes to apply in person and receive a ballot which he may immediately vote in the office of the county board of elections.

(b) ~~Forms~~ Types of Applications: Instructions. --

- (1) ~~Expected Absence from County on Election Day; Form A.~~ -- A voter expected to be absent from the county in which registered during the entire period that the polls will be open on primary or general election day, or a near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 60 days nor later than 5:00 P.M. on the Tuesday before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The applicant shall sign his application personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form. The application form when properly filled out shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or the supervisor of elections of the county board of elections.

- (2) ~~Absence for Sickness or Physical Disability Occurring before 5:00 P.M. on the Tuesday prior to the Primary or General Election; Form B.~~ -- A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of his sickness or other physical disability, or his near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 60 days nor later than 5:00 P.M. on the Tuesday before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The application shall be signed by the voter personally, or it shall be signed by a near relative. The application

shall be signed in the presence of a witness, who shall sign his name in the place provided on the form.

The application form, when properly filled out, shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or supervisor of elections of the county board of elections of the county in which the applicant is registered.

- (3) Absence for Sickness or Physical Disability Occurring after 5:00 P.M. on the Tuesday prior to Primary or General Election; ~~Form C.~~ -- A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of sickness or other disability occurring after 5:00 P.M. on the Tuesday before the election, or a near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not later than 12:00 noon on the day preceding the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The chairman of the county board of elections shall not issue or accept an application under the provisions of this subdivision later than 12:00 noon on the day preceding the election in which the voter seeks to vote.

The application shall be signed by the voter personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness who shall sign his name in the place provided on the form.

The certificate printed on the application form below the signatures of the applicant and his subscribing witness shall be filled in and signed in the presence of a witness by a licensed physician who is attending the applicant. The witness to the physician's certificate shall sign his name in the place provided on the form.

The application form, when properly filled out, signed by or for the applicant in the presence of a subscribing witness as provided in this subdivision, and certified and signed by the attending physician in the presence of a subscribing witness, may be transmitted by mail to the chairman or supervisor of elections of the board of elections of the county in which the applicant is registered, or it may be delivered to the chairman or supervisor of elections in person by the applicant or by his near relative.

- (4) 'One-Stop' Voting Procedure, in Office of the County Board of Elections; ~~Form OS.~~ -- A voter falling in the category specified in G.S. 163-227.2 may execute ~~Form OS~~ an application form and proceed to vote his absentee ballot in the office of the county board of elections only.

(c) Application Forms Issued by Chairman of County Board of Elections. -- The chairman of the county board of elections shall be sole custodian of all absentee ballot application forms, but he, the secretary of the board and the supervisor of elections of the board, in accordance with one of the following two procedures, shall issue and deliver a single application form, upon request, to a person authorized to sign such an application under the provisions of this section:

- (1) The chairman, secretary or supervisor of elections may deliver the form to a voter personally or to his near relative at the office of the county board of elections for the voter's own use; or
- (2) The chairman, secretary or supervisor of elections may mail the form to a voter for his own use upon receipt of a written request from the voter or his near relative.

At the time he issues an application form, the chairman, secretary or supervisor of elections of the county board of elections shall number it and write the name of the voter in the space provided therefor at the top of the form. At the same time the chairman, secretary or supervisor of elections shall insert the name of the voter and the number assigned his application in the register of absentee ballot applications and ballots issued provided for in G.S. 163-228. If the application is requested by the voter's near relative, the chairman, secretary or supervisor of elections also shall insert that person's name in the register after the name of the voter.

The chairman, secretary or supervisor of elections shall issue only one application form to a voter or his near relative unless a form previously issued is returned to the chairman, secretary or supervisor of elections and marked 'Void' by him. In such a situation, the chairman, secretary or supervisor of elections may issue another application form to the voter or a near relative, but he shall retain the voided application form in the board's records. If the application is requested by the voter's near relative, the chairman, secretary or supervisor of elections shall write the name of the near relative on the index of near relatives, applying for applications for absentee ballots; the index shall be in such form as may be prescribed or approved by the State Board of

Elections; a separate index shall be maintained for each primary, general or special election in which absentee voting is allowed.

- (3) Applications or Absentee Ballots Transmitted by Mail or in Person. -- An application for absentee ballots shall be made and signed only by the voter desiring to use them or the voter's near relative or legal guardian and shall be valid only when transmitted to the chairman or supervisor of elections of the county board of elections by mail or delivered in person by the voter or his near relative or legal guardian.
- (4) Who Is Authorized to Request Applications for Absentee Ballots. -- A voter may personally request an application for absentee ballots or may cause such request to be made through a near relative or legal guardian. For the purpose of this Article, 'near relative or legal guardian' means spouse, brother, sister, parent, grandparent, child, or grandchild.
- (5) The form of application for persons applying to vote in a primary under the provisions of this section shall be as designed and prescribed by the State Board of Elections. No voter shall be furnished ballots for voting in a primary except the ballots for candidates for nomination in the primary of the political party with which he is affiliated at the time he makes application for absentee ballots. The official registration records of the county in which the voter is registered shall be proof of the party, if any, with which the voter is affiliated.
- (6) The county board of elections shall cause to be stamped or printed on the face of each application for absentee ballots the following legend, and the blank space in the legend to be completed:

'This application is issued for absentee ballots to be voted in the _____ (primary or general or special election) to be held in _____ County on the _____ day of _____, 19 ____.' The county board of elections shall not issue any absentee ballots on the basis of any application that does not bear the completed legend.
- (7) No applications shall be issued earlier than 60 days prior to the election in which the voter wishes to vote. Nothing herein shall prohibit the county board of elections from receiving written requests for applications earlier than 60 days prior to the election but such applications shall not be mailed or issued to the voter in person earlier than 60 days prior to the election.

- (8) Applications for absentee ballots shall be issued only by mail or in the office of the county board of elections to the voter or a near relative or legal guardian authorized to make application. No election official shall issue applications for absentee ballots except in compliance with the provisions stated herein."

Sec. 2. G.S. 163-227.2(b) reads as rewritten:

"(b) Not earlier than the day following the day on which the registration books close before an election, in which absentee ballots are authorized, in which he seeks to vote and not later than 5:00 P.M. on the Friday prior to that election, the voter shall appear in person only at the office of the county board of elections and request that the chairman, a member, or the supervisor of elections of the board, or an employee of the board of elections, authorized by the board, furnish him with ~~application Form OS~~ an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the chairman, member, supervisor of elections or authorized employee of the board, and shall deliver the application to that person."

Sec. 3. G.S. 163-69.1(b) reads as rewritten:

"(b) A voter whose name has been changed shall report such change of name to an official authorized to register voters under G.S. 163-80 no later than the twenty-first day (excluding Saturdays and Sundays) prior to an election, primary, or special election in order to vote in said election if the name change occurred on or before that date. Alternatively, the voter may report such change to the registrar at the polls, and, if otherwise eligible, may vote. A voter wishing to vote by absentee ballot may report the name change to the county board of elections, by mail or in person, along with that voter's application for absentee ballot; and if otherwise eligible, may vote.

Any report made under this section shall be made under oath, and on a form prescribed by the county board of elections. A name-change form shall be included in any mailing to a voter of an absentee ballot application form."

Sec. 4. G.S. 163-231(a) reads as rewritten:

"(a) Procedure for Voting Absentee Ballots. -- In the presence of two other persons who are at least 18 years of age, the voter shall:

- (1) Mark his ballots, or cause them to be marked by one of such persons in his presence according to his instruction;
- (2) Fold each ballot separately, or cause each of them to be folded in his presence;
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence;

- (4) Make the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests their assistance and they are otherwise authorized by law to give assistance. The persons in whose presence the ballot was marked shall sign the certificate as witnesses, and shall indicate their address. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the chairman of the county board of elections who issued the ballots."

Sec. 5. This act shall become effective with respect to primaries and elections held on or after January 1, 1991.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 606

CHAPTER 992

AN ACT TO MAKE CERTAIN POWERS OF ATTORNEY DURABLE AS DEFINED IN G.S. 32A-8.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-14(a) reads as rewritten:

"(a) A power of attorney executed prior to October 1, 1988, pursuant to G.S. 47-115.1 as it existed prior to October 1, 1983, shall be deemed to be a durable power of attorney as defined in G.S. 32A-8."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 899

CHAPTER 993

AN ACT TO ALLOW RANDOLPH COUNTY TO CREATE RURAL FIRE PROTECTION DISTRICTS CONTIGUOUS WITH THE BOUNDARIES OF EXISTING COUNTY FIRE SERVICE DISTRICTS, AND TO ANNEX TERRITORY TO RURAL FIRE PROTECTION DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 502, Session Laws of 1985, as amended by Chapter 940, Session Laws of 1985, and Chapter 235,

Session Laws of 1987, and as rewritten by Chapter 959, Session Laws of 1987, reads as rewritten:

"Sec. 3. Section 1 of this act applies only to Lee, Randolph, and Wake Counties. In applying Section 1 to Wake County, however, G.S. 69-25.3A(d) as enacted by that section is amended by deleting: '. provided that if such action is taken prior to August 15, 1985, the county board of commissioners may provide that it shall become effective beginning with the 1985-86 fiscal year'. Section 2 of this act applies only to Caldwell, Chatham, Lee, Randolph, Wake and Wayne Counties. In applying Section 2 to Wayne and Wake Counties, however, G.S. 69-25.11A(a)(3) is amended by deleting the last two sentences of that subdivision. In applying G.S. 69-25.11A(b) as enacted by that section to Wake County, however, the words '. provided that if such action is taken prior to August 15, 1985, the county board of commissioners may provide that it shall become effective beginning with the 1985-86 fiscal year' are deleted. In applying G.S. 69-25.11A(b) and G.S. 69-25.3A(d) as enacted by this act to Randolph County, if such action is taken prior to August 15, 1990, the county board of commissioners may provide that it shall become effective beginning with the 1990-91 fiscal year."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

H.B. 2288

CHAPTER 994

AN ACT TO PROVIDE THAT BOTH FELONS AND MISDEMEANANTS SHALL BE ELIGIBLE FOR INTENSIVE PROBATION AND PAROLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-262(c) reads as rewritten:

"(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive Probation and Parole. This program shall provide intensive supervision for probationers and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. At least eighty percent (80%) of each intensive probation team's caseload shall be persons who have been convicted of a felony. The intensive probation and parole program shall be available to both felons and misdemeanants."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.B. 734

CHAPTER 995

AN ACT TO AMEND THE GENERAL RULES OF PLEADINGS TO ALLOW THE CLAIMANT THIRTY DAYS TO RESPOND TO A REQUEST FOR A STATEMENT OF THE MONETARY RELIEF SOUGHT AND TO MODIFY PROCEDURES OF THE JUDICIAL STANDARDS COMMISSION TO PROVIDE FOR WAIVER OF CONFIDENTIALITY UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 8(a) reads as rewritten:

"(a) Claims for relief. -- A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim shall contain

- (1) A short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief, and
- (2) A demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. In all negligence actions, and in all claims for punitive damages in any civil action, wherein the matter in controversy exceeds the sum or value of ten thousand dollars (\$10,000), the pleading shall not state the demand for monetary relief, but shall state that the relief demanded is for damages incurred or to be incurred in excess of ten thousand dollars (\$10,000). However, at any time after service of the claim for relief, any party may request of the claimant a written statement of the monetary relief sought, and the claimant shall, within ~~40~~ 30 days after such service, provide such statement, which shall not be filed with the clerk until the action has been called for trial or entry of default entered. Such statement may be amended in the manner and at times as provided by Rule 15."

Sec. 2. G.S. 7A-377(a) reads as rewritten:

"(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission

may also make an investigation on its own motion. The Commission is authorized to issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, to punish for contempt, and to prescribe its own rules of procedure. No justice or judge shall be recommended for censure or removal unless he has been given a hearing affording due process of law. ~~All papers filed with and proceedings before the Commission are confidential, unless the judge involved shall otherwise request. The recommendations of the Commission to the Supreme Court, and the record filed in support of the recommendations are not confidential. Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any preliminary investigation which the Commission may make, are confidential, except as provided herein. After the preliminary investigation is completed, and if the Commission concludes that formal proceedings should be instituted, the notice and complaint filed by the Commission, along with the answer and all other pleadings, are not confidential. Formal hearings ordered by the Commission are not confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are not confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. No other publication of such testimony or evidence is privileged, except that the record filed with the Supreme Court continues to be privileged.~~ At least five members of the Commission must concur in any recommendation to censure or remove any justice or judge. A respondent who is recommended for censure or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if he has objections to it, to have the record settled by the Commission. He is also entitled to present a brief and to argue his case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of censure or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent."

Sec. 3. Section 1 of this act is effective October 1, 1990, and shall apply to all requests made on or after that date. Section 2 is effective October 1, 1990, except that prior law applies to papers filed with the Commission prior to October 1, 1990, and proceedings before the Commission prior to October 1, 1990.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

AN ACT TO PROVIDE THAT A VESTED RIGHT SHALL BE ESTABLISHED FOR TWO YEARS, WITH PROVISION FOR EXTENSION NOT TO EXCEED FIVE YEARS, UPON CITY OR COUNTY APPROVAL OF A SITE SPECIFIC DEVELOPMENT PLAN AND THAT A VESTED RIGHT SHALL BE ESTABLISHED NOT TO EXCEED FIVE YEARS UPON CITY OR COUNTY APPROVAL OF A PHASED DEVELOPMENT PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-385(b) reads as rewritten:

"(b) Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without consent of the owner with regard to lots, buildings and uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S. 160A-385.1."

Sec. 2. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-385.1. Vested rights.

(a) The General Assembly finds and declares that it is necessary and desirable, as a matter of public policy, to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning. Furthermore, the General Assembly recognizes that city approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses.

The ability of a landowner to obtain a vested right after city approval of a site specific development plan or a phased development plan will preserve the prerogatives and authority of local elected officials with respect to land-use matters. There will be ample opportunities for public participation and the public interest will be served. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare.

(b) Definitions.

- (1) 'Landowner' means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan under this section, in the manner allowed by ordinance.
- (2) 'City' shall have the same meaning as set forth in G.S. 160A-1(2).
- (3) 'Phased development plan' means a plan which has been submitted to a city by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan determined by the city to be a site specific development plan.
- (4) 'Property' means all real property subject to zoning regulations and restrictions and zone boundaries by a city.
- (5) 'Site specific development plan' means a plan which has been submitted to a city by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a preliminary or general development plan, a conditional or special use permit, a conditional or special use district zoning plan, or any other land-use approval designation as may be utilized by a city. Unless otherwise expressly provided by the city, such a plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the city pursuant to an ordinance, and the document that triggers such vesting shall be so identified at the time of its approval. However, at a minimum, the ordinance to be adopted by the city shall designate a vesting

point earlier than the issuance of a building permit. A variance shall not constitute a site specific development plan, and approval of a site specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property may constitute a site specific development plan.

- (6) 'Vested right' means the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

(c) Establishment of vested right.

A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the city with jurisdiction over the property. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan including any amendments thereto. A city may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. A city shall not require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phase development plan shall be deemed approved upon the effective date of the city's action or ordinance relating thereto.

(d) Duration and termination of vested right.

- (1) A right which has been vested as provided for in this section shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the city.
- (2) Notwithstanding the provisions of subsection (d)(1), a city may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic

cycles, and market conditions. These determinations shall be in the sound discretion of the city.

- (3) Notwithstanding the provisions of (d)(1) and (d)(2), the city may provide by ordinance that approval by a city of a phased development plan shall vest the zoning classification or classifications so approved for a period not to exceed five years. The document that triggers such vesting shall be so identified at the time of its approval. The city still may require the landowner to submit a site specific development plan for approval by the city with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification or classifications. Nothing in this section shall be construed to require a city to adopt an ordinance providing for vesting of rights upon approval of a phased development plan.

- (4) Following approval or conditional approval of a site specific development plan or a phased development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the city to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the city from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.

- (5) Upon issuance of a building permit, the provisions of G.S. 160A-418 and G.S. 160A-422 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

- (6) A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(e) Subsequent changes prohibited; exceptions.

- (1) A vested right, once established as provided for in this section, precludes any zoning action by a city which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan or an approved phased development plan, except:

- a. With the written consent of the affected landowner;
- b. Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would

pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan or the phased development plan:

- c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the city, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
 - d. Upon findings, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the city of the site specific development plan or the phased development plan; or
 - e. Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in the site specific development plan or the phased development plan, in which case the city may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.
- (2) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land-use regulation by a city, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan or a phased development plan upon the expiration or termination of the vesting rights period provided for in this section.
- (3) Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of a city to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses.
- (f) Miscellaneous provisions.

- (1) A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan or a phased development plan, all successors to the original landowner shall be entitled to exercise such rights.
- (2) Nothing in this section shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.
- (3) In the event a city fails to adopt an ordinance setting forth what constitutes a site specific development plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice."

Sec. 3. G.S. 160A-31 is amended by adding a new subsection (h) to read:

"(h) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested right shall be terminated."

Sec. 4. G.S. 160A-58.1 is amended by adding a new subsection (d) to read:

"(d) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested rights shall be terminated."

Sec. 5. G.S. 153A-344(b) reads as rewritten:

"(b) Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries

shall not be applicable or enforceable without consent of the owner with regard to ~~lots~~ buildings and uses for which either (i) building permits have been issued pursuant to G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii) a vested right has been established pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired pursuant to G.S. 153A-344.1."

Sec. 6. Part 3 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-344.1. Vesting rights.

(a) The General Assembly finds and declares that it is necessary and desirable, as a matter of public policy, to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning. Furthermore, the General Assembly recognizes that county approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses.

The ability of a landowner to obtain a vested right after county approval of a site specific development plan or a phased development plan will preserve the prerogatives and authority of local elected officials with respect to land-use matters. There will be ample opportunities for public participation and the public interest will be served. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare.

(b) Definitions.

(1) 'Landowner' means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan under this section, in the manner allowed by ordinance.

(2) 'County' shall have the same meaning as set forth in G.S. 153A-1(3).

(3) 'Phased development plan' means a plan which has been submitted to a county by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty

than the plan determined by the county to be a site specific development plan.

- (4) 'Property' means all real property subject to zoning regulations and restrictions and zone boundaries by a county.
- (5) 'Site specific development plan' means a plan which has been submitted to a county by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a preliminary or general development plan, a conditional or special use permit, a conditional or special use district zoning plan, or any other land-use approval designation as may be utilized by a county. Unless otherwise expressly provided by the county such a plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the county pursuant to an ordinance, and the document that triggers such vesting shall be so identified at the time of its approval. However, at a minimum, the ordinance to be adopted by the county shall designate a vesting point earlier than the issuance of a building permit. A variance shall not constitute a site specific development plan, and approval of a site specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels or property may constitute a site specific development plan.
- (6) 'Vested right' means the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

(c) Establishment of vested right.

A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the county with jurisdiction over the property. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan including any amendments thereto. A county may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. A county shall not require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phased development plan shall be deemed approved upon the effective date of the county's action or ordinance relating thereto.

(d) Duration and termination of vested right.

- (1) A right which has been vested as provided for in this section shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the county.
- (2) Notwithstanding the provisions of subsection (d)(1), a county may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the county.
- (3) Notwithstanding the provisions of (d)(1) and (d)(2), the county may provide by ordinance that approval by a county of a phased development plan shall vest the zoning classification or classifications so approved for a period not to exceed five years. The document that triggers such vesting shall be so identified at the time of its approval. The county still may require the landowner to submit a site specific development plan for approval by the county with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification or classifications. Nothing in this

section shall be construed to require a county to adopt an ordinance providing for vesting of rights upon approval of a phased development plan.

- (4) Following approval or conditional approval of a site specific development plan or a phased development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the county to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the county from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.

- (5) Upon issuance of a building permit, the provisions of G.S. 153A-358 and G.S. 153A-362 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

- (6) A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(e) Subsequent changes prohibited; exceptions.

- (1) A vested right, once established as provided for in this section, precludes any zoning action by a county which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan or an approved phased development plan, except:

- a. With the written consent of the affected landowner;
- b. Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan or the phased development plan;
- c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the county, together with interest thereon at the legal rate until paid.

- Compensation shall not include any diminution in the value of the property which is caused by such action;
- d. Upon findings, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the county of the site specific development plan or the phased development plan; or
 - e. Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in the site specific development plan or the phased development plan, in which case the county may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.
- (2) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land-use regulation by a county, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan or a phased development plan upon the expiration or termination of the vesting rights period provided for in this section.
 - (3) Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of a county to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses.
- (f) Miscellaneous provisions.
- (1) A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan or a phased development plan, all successors to the original landowner shall be entitled to exercise such rights.
 - (2) Nothing in this section shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

- (3) In the event a county fails to adopt an ordinance setting forth what constitutes a site specific development plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice."

Sec. 7. This act shall become effective on October 1, 1991, and shall apply only to site specific development plans or phased development plans approved on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

S.B. 1439

CHAPTER 997

AN ACT TO TRANSFER THE VETERANS AND MILITARY EDUCATION PROGRAM FROM THE DEPARTMENT OF COMMUNITY COLLEGES AND THE STATE BOARD OF COMMUNITY COLLEGES TO THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA.

Whereas, the Veterans and Military Education Program is a federally funded program administered by the North Carolina Department of Community Colleges under contract with the United States Veterans Administration; and

Whereas, the Veterans and Military Education Program is substantially involved with assistance to military personnel, whether on active duty, released from active duty, or retired in the form of directing military personnel to available State and nonpublic programs of higher education and resources for meeting the costs of higher education; and

Whereas, The University of North Carolina is charged under State law, in part, to "foster the development of a well-planned and coordinated system of higher education" and to "encourage the economical use of the State's resources"; and

Whereas, The University of North Carolina is responsible under State law to administer various programs of federal and State student financial aid that are available to military personnel; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Veterans and Military Education Program is transferred from the Department of Community Colleges and the State Board of Community Colleges to The University of North Carolina. This transfer shall have all of the elements of a Type I transfer, as that term is defined in G.S. 143A-6(a).

Sec. 2. The funds appropriated to the Department of Community Colleges and the State Board of Community Colleges for the 1990-91 fiscal year to administer the Veterans and Military Education Program are transferred to the Board of Governors of The University of North Carolina.

Sec. 3. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

H.B. 2115

CHAPTER 998

AN ACT TO EXEMPT MACON COUNTY FROM CERTAIN PROCEDURAL REQUIREMENTS ON DISPOSAL OF LAND AS AN INDUSTRIAL PARK.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 137 of the 1981 Session Laws, as amended by Chapters 405 and 939 of the 1983 Session Laws and Chapter 420 of the 1987 Session Laws, is further amended by adding immediately after the word "Jackson" the phrase ", Macon,".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

H.B. 2136

CHAPTER 999

AN ACT TO ALLOW DURHAM COUNTY TO CREATE A SPECIAL PROJECTS DISTRICT AS A SEPARATE POLITICAL SUBDIVISION WITHIN THE COUNTY FOR THE PURPOSE OF FUNDING JOINT PROJECTS UNDERTAKEN THROUGH INTERLOCAL COOPERATION AGREEMENTS BETWEEN THE COUNTY OF DURHAM, THE CITY OF DURHAM, AND THE TOWN OF CHAPEL HILL TO ENSURE PROPORTIONAL EQUALITY OF CITY AND COUNTY TAXPAYER PARTICIPATION AND TO ALLOW AN EXTENSION OF TIME FOR DURHAM COUNTY HOSPITAL CORPORATION TO FILE AN APPLICATION FOR A SALES AND USE TAX REFUND.

The General Assembly of North Carolina enacts:

Section 1. *Definitions.* As used in this act:

- (1) "City" means a city as defined in G.S. 160A-1 which is located wholly or partly within the county creating a Special Projects District under this act:

- (2) "District" means a Special Projects District established under this act;
- (3) "Joint Project" means any capital project, governmental program or activity the undertaking, planning, building, maintenance, or otherwise funding of which is shared between a county and a city or cities and which each is authorized by law to undertake, plan, build, maintain, or otherwise fund on its own; and
- (4) "Special Projects District Board" means the board of county commissioners creating the District when that board is acting ex officio as the governing board of the District.

Sec. 2. *Purpose and intent; exclusion.* This act is intended to allow a county to establish certain areas of that county as a separate body politic and corporate to be known as a Special Projects District as provided by this act. Through such a separate political subdivision, a county on behalf of the area of that county in the district may

- (1) Enter into Interlocal Cooperation Agreements pursuant to Part I of Article 20 of Chapter 160A of the General Statutes with a city or cities, or;
- (2) As otherwise permitted by law jointly undertake with a city or cities one or more joint projects that their governing boards have determined to be beneficial to their collective constituencies.

The act authorizes the District, as a part of its regular budget-making process, to levy a separate tax on property within the District at a rate specifically identified as that necessary to fund the District's portion of the joint project, which when added to a property tax appropriation from the city or cities will fund the project and result in proportional equality of tax payments to the project by each taxpayer of the particular city and District participating in the joint project.

Sec. 3. *Authority to create a Special Projects District; area included; powers.* The board of commissioners of a county may establish a certain area of the county as a separate body politic and corporate to be known as the _____ County Special Projects District (insert name of county creating the District). The District may be created by the board of commissioners by ordinance after a public hearing, notice of which shall be given at least 10 days prior to the date of the hearing, and shall consist of all that portion of the county lying outside each city that has joined or intends to join with the District in one or more joint projects.

Sec. 4. *District Governing Board.* The Board of Commissioners of a county shall serve ex officio as the governing board of the District, and shall develop operating procedures for the functioning of the Special Projects District Board, including a schedule of meetings

to adequately carry out the duties and functions of that Board and the business of the District.

Sec. 5. *Effect on District of annexation by a city.* Upon annexation of any portion of the District by a city that has joined with the District in a joint project, the portion annexed shall, on the effective date of the annexation, cease to be part of the District. When the whole or any portion of the District has been annexed by a city that has joined with the District in one or more joint projects, and the effective date of the annexation is a date other than a date in the month of June, the amount of the tax levied on property in the District for the fiscal year in which municipal taxes are prorated under G.S. 160A-58.10 shall be multiplied by the following fraction: the denominator shall be 12 and the numerator shall be the number of full calendar months remaining in the fiscal year following the day on which the annexation becomes effective. For each owner, the product of the multiplication is the prorated Special Projects District payment. The finance officer of the annexing municipality shall obtain from the tax assessor or tax collector of Durham County a list of the owners of property on which Special Projects District taxes were levied in the territory being annexed, and the annexing municipality shall no later than 90 days after the effective date of the annexation, pay the amount of the prorated Special Projects District tax payment to the owners of that property. Such payments shall come from any funds not otherwise restricted by law. Annexation of a portion of the District shall not, however, invalidate any joint project between the District and the annexing municipality.

Sec. 6. *Joint participation in projects required.* Before the Special Projects District can levy a tax pursuant to law, it shall have first either be jointly participating with a city in a project, or have agreed either through an Interlocal Cooperation Agreement or some established course of conduct with such municipality to jointly undertake a project.

Sec. 7. *Applicability to existing projects.* Upon creation of the Special Projects District as provided for herein, taxes may be levied to finance between a county (through a District) and a city joint projects already in existence at the time of the creation of the District, provided that the county assign to the District all of its rights and obligations toward the project.

Sec. 8. *Powers of Special Projects District.* A Special Projects District created under this act shall have the following powers:

- (1) To join with a city or cities in the design, creation, construction, operation, maintenance, repair, renovation, alteration or funding of projects, programs, or governmental activities authorized by law, to acquire real and personal

property associated with the same, and to enter into Interlocal Cooperation Agreements pursuant to Part 1, Article 20 of Chapter 160A of the General Statutes with any city for the purpose of joining together in carrying out such projects and programs if the same may be deemed necessary to effectuate the intent of this act;

- (2) To levy taxes on property within the District for the purposes for which a county can levy taxes under Article 7 of Chapter 153A of the General Statutes; and
- (3) To acquire, own, and dispose of real and personal property in the same manner as a county under Article 8 of Chapter 153A of the General Statutes.

Sec. 8.1. *Effect of annexation or incorporation.* If, after the creation of a District, a city is incorporated within that county, or a city annexes into the county which had not annexed territory within the county prior to the creation of the District, the area within the annexing or incorporating city shall remain in the District unless the District and the annexing or incorporating city shall enter into an agreement for the annexing or incorporating city to participate in the joint project, in which case the area shall cease to be in the District upon the effective date of the agreement, with taxation handled as provided by Section 5 of this act.

Sec. 9. *Procedure for tax levy.* Unless Special Projects Districts have been authorized to levy taxes on property by general law uniformly applicable throughout the State, such taxes may be levied only with the approval of the qualified voters of the Special Projects District. Such referendum shall be called by the Special Projects District Board under the same procedures as G.S. 153A-149(d).

Sec. 10. *Short title.* This act may be cited as the Special Projects District Act.

Sec. 11. Sections 1 through 10 of this act apply only to Durham County and any municipalities located within that county.

Sec. 12. Notwithstanding the provisions of G.S. 105-164.14(b) and (d), an application filed by Durham County Hospital Corporation requesting a refund of sales and use taxes paid during the first six months of the calendar year 1987, that otherwise complies with the requirements of G.S. 105-164.14(b), shall be considered timely if it is filed on or before December 31, 1990.

Sec. 13. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

H.B. 2321

CHAPTER 1000

AN ACT TO CONTINUE THE AGRICULTURAL FINANCE AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122D-6(12), 122D-6(15), 122D-10, 122D-12, 122D-14, 122D-15, and 122D-17 as they existed on June 29, 1990, are re-enacted.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

H.B. 2402

CHAPTER 1001

AN ACT TO EXPAND THE EGG PROMOTION TAX TO INCLUDE PROCESSED EGGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-245.32 reads as rewritten:

" § 106-245.32. ~~Levy of tax; rules and regulations, rules.~~

~~There is hereby levied on each 30-dozen case of eggs sold for use in North Carolina an excise tax of five cents (5¢) per case; provided, however, such tax shall be levied only once. An excise tax is levied on eggs and processed eggs sold for use in this State. The tax on eggs is five cents (5¢) for each case of 30 dozen eggs. The tax on processed eggs is eleven cents (11¢) for each 100 pounds of processed eggs sold for use in this State. The tax imposed by this section is payable only once on the same eggs or processed eggs.~~

~~Processed eggs include frozen eggs, liquid eggs, and hard-cooked eggs. 'Use' means consumption by the consumer. The Board may promulgate adopt rules and regulations as are necessary for the interpretation, administration and enforcement of to administer this tax."~~

Sec. 2. G.S. 106-245.33 reads as rewritten:

" § 106-245.33. ~~Handler to remit tax to Department of Agriculture; report Report and payment of tax by handler; definition and functions of handler.~~

~~(a) For the purpose of carrying out the provisions of this Article, the handler of eggs on which a tax has been levied in accordance with the provisions of this Article shall remit such tax or assessment to the Department in the manner and at the time hereinafter provided. The tax imposed by this Article is payable monthly to the Department by the handler of eggs or processed eggs. The tax is due when a report~~

~~is required to be filed. A handler shall file a report with the Department on a form provided by the Department within 20 days after the end of each month. The report shall state the volume of eggs or processed eggs handled by the handler during the preceding month. Reports to the Department shall be on forms prescribed and furnished by the Commissioner and shall be a statement of gross volume of eggs subject to the tax which have been packed, processed or handled by the handler in the previous month and shall be filed with the Department by the 20th day of each month. The tax levied on eggs shall be due and payable by the handler on the same day that the report is due. Such tax shall be paid to the Department and shall be deposited with the State Treasurer to the credit of the North Carolina Egg Fund.~~

(b) The term 'handler' means any person who operates a grading station in North Carolina, a packer, ~~huckster~~ huckster, or distributor who handles eggs in North ~~Carolina or~~ Carolina, a farmer who packs, ~~processes~~ processes, or otherwise performs the functions of a handler in North ~~Carolina.~~ Carolina, or a distributor or seller of processed eggs. The term 'handler' includes any person in North Carolina who purchases eggs for sale or distribution or any farmer in North Carolina who sells or distributes eggs to anyone other than a registered handler.

For purposes of this Article, the functions of a handler of eggs or processed eggs include the sale, ~~distribution~~ distribution, or other disposition of eggs or processed eggs in North Carolina regardless of where the eggs or processed eggs were produced or purchased.

The term 'registered handler' means any person who has registered with the Department to receive monthly return forms for reporting the tax levied ~~herein,~~ by this Article.

Every person, whether inside or outside the State, who engages in business in North Carolina as a handler is required to register and to collect and pay the tax due on all eggs or processed eggs sold or ~~delivered~~ for storage, use or consumption in this State. ~~Such handlers~~ A handler shall maintain a certificate of registration, file ~~returns~~ returns, and perform all other duties required of handlers."

Sec. 3. G.S. 106-245.34 reads as rewritten:

"§ 106-245.34. *Exemptions.*

~~The eggs of any person selling~~ Eggs sold by a handler who sells less than 500 cases per a year shall be are exempt from the tax levied under this Article. Processed eggs sold by a handler who sells less than 1,000 pounds of processed eggs a year are exempt from the tax levied under this Article. The Board shall establish a procedure for returning taxes paid ~~by exempt persons,~~ on exempt eggs or processed eggs."

Sec. 4. G.S. 106-245.35 reads as rewritten:

" § 106-245.35. *Records to be kept by handler.*

The handler shall keep a complete record of the eggs or processed eggs ~~subject to the provisions of this Article which have been packed, processed or handled by him and shall preserve such records~~ for a period of not less than two years from the time ~~such the eggs or processed eggs were packed, processed or handled.~~ Such These records shall be open for inspection by the Commissioner or his duly authorized agents and shall be established and maintained as required by the Commissioner."

Sec. 5. G.S. 106-245.38 reads as rewritten:

" § 106-245.38. *Violations.*

(a) It shall be a misdemeanor for any handler knowingly to report falsely to the Department the quantity of eggs or processed eggs handled by him during any ~~period or~~ period, to falsify the records of the eggs or processed eggs handled by him, ~~or~~ to fail to keep a complete record of the eggs or processed eggs handled by him, or to fail to preserve ~~such the~~ records for a period of not less than two years from the time ~~such the~~ eggs or processed eggs are handled.

(b) It shall be a violation of the North Carolina Egg Law ~~Law~~, Article 25A of this Chapter, for a handler to fail to register as required ~~herein, and any~~ by this Article. Any eggs transported, sold sold, or offered for sale by such a handler who is not a registered handler shall be subject to the stop-sale and penalty provisions of the North Carolina Egg Law (G.S. 106-245.13 et seq.). Law."

Sec. 6. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

S.B. 1084

CHAPTER 1002

AN ACT TO CONFORM THE LAWS OF NORTH CAROLINA TO THE REQUIREMENTS OF CERTAIN FEDERAL LAWS AND CONSTITUTIONAL PRINCIPLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-115 is repealed.

Sec. 2. G.S. 105-134.6(b)(4) is repealed.

Sec. 3. This act is effective for taxable years beginning on or after January 1, 1990.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

H.B. 1679

CHAPTER 1003

AN ACT TO PROVIDE EARLY INTERVENTION, DEVELOPMENTAL SERVICES, AND EDUCATION TO HANDICAPPED CHILDREN FROM BIRTH TO FIVE YEARS OF AGE.

Whereas, the General Assembly finds that there is an urgent and substantial need to enhance the development of children from birth to their fifth birthday, including infants and toddlers, with or at risk for handicapping conditions and to minimize their potential for developmental delay; and

Whereas, the General Assembly finds that there is an urgent and substantial need to enhance the capacity of families to meet the special needs of their children from birth to their fifth birthday, including infants and toddlers, who have handicapping conditions; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 13A. Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age.

" § 143B-179.5. Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age; establishment, composition, organization; duties, compensation, reporting.

(a) There is established an Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age in the Department of Human Resources.

(b) The Interagency Coordinating Council for Early Intervention Services shall have 26 members, appointed by the Governor, for terms of two years and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Members may succeed themselves for one term and may be appointed again, after being off the Council for one term.

The composition of the Council shall be as follows:

- (1) At least three members who are parents of infants or toddlers eligible for services pursuant to G.S. 122C-3(13a) or of handicapped children aged three through six;

- (2) At least three other members who are providers of early intervention services;
- (3) Two members of the Senate, appointed from recommendations of the President Pro Tempore and two members of the House of Representatives, appointed from recommendations of the Speaker;
- (4) At least one other member who is a person involved in staff development;
- (5) Other members who represent the Department of Public Instruction, the Department of Human Resources, the Department of Environment, Health, and Natural Resources, and other appropriate agencies involved in the provision of or payment for early intervention services to infants and toddlers and their families; and
- (6) At least eight members to represent the public at large.

(c) At the first meeting following the appointments, the Council shall elect a parent and a professional as cochairs, who may establish those standing and ad hoc committees and task forces as may be necessary to carry out the functions of the Council and appoint Council members or other individuals to serve on these committees and task forces. The Council shall meet at least quarterly. A majority of the Council shall constitute a quorum for the transaction of business.

(d) The Council shall advise the Departments of Human Resources, and Environment, Health, and Natural Resources, and other appropriate agencies in carrying out their early intervention services, and the Department of Public Instruction, and other appropriate agencies, in their activities related to the provision of special education services for preschoolers. The Council shall specifically address in its studies and evaluations that it considers necessary to its advising:

- (1) The identification of sources of fiscal and other support for the early intervention system;
- (2) The development of policies related to the early intervention services;
- (3) The preparation of applications for available federal funds;
- (4) The resolution of interagency disputes; and
- (5) The promotion of interagency agreements.

(e) Members of the Council and parents on ad hoc committees and task forces of the Council shall receive travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) The Council shall prepare and submit an annual report to the Governor and to the General Assembly on the status of the early intervention system for eligible infants and toddlers and on the status of special education services for preschoolers.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources and the Superintendent of Public Instruction, as specified by the interagency agreement authorized by G.S. 122C-112(a)(13).

" § 143B-179.6. Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age; agency cooperation.

All appropriate agencies, including the Department of Human Resources, the Department of Environment, Health, and Natural Resources, and the Department of Public Instruction, and other public and private service providers shall cooperate with the Council in carrying out its mandate."

Sec. 2. G.S. 122C-3 reads as rewritten:

" § 122C-3. *Definitions.*

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

- (1) 'Area authority' means the area mental health, developmental disabilities, and substance abuse authority.
- (2) 'Area board' means the area mental health, developmental disabilities, and substance abuse board.
- (3) 'Camp Butner reservation' means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State.
- (4) 'City' has the same meaning as in G.S. 153A-1(1).
- (5) 'Catchment area' means the geographic part of the State served by a specific area authority.
- (6) 'Client' means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.
- (7) 'Client advocate' means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.
- (8) 'Commission' means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
- (9) 'Confidential information' means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. 'Confidential information' does not include statistical information from

reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.

- (10) 'County of residence' of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.
- (11) 'Dangerous to himself or others' means:
 - a. 'Dangerous to himself' means that within the relevant past:
 - 1. The individual has acted in such a way as to show:
 - I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and
 - II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a *prima facie* inference that the individual is unable to care for himself; or
 - 2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
 - 3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining

reasonable probability of physical debilitation, suicide, or self-mutilation.

- b. 'Dangerous to others' means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is *prima facie* evidence of dangerousness to others.
- (12) 'Department' means the North Carolina Department of Human Resources.
- (12a) 'Developmental disability' means a severe, chronic disability of a person which:
- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;
 - c. Is likely to continue indefinitely;
 - d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and
 - e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or
 - f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.
- (13) 'Division' means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department.
- (13a) 'Eligible infants and toddlers' means children with or at risk for developmental delays or atypical development until:

- a. They have reached their third birthday;
- b. Their parents have requested to have them receive services in the preschool program for handicapped children established pursuant to Part 14 of Article IX of Chapter 115C of the General Statutes; and
- c. They have been placed in the program by the local educational agency.

In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third birthday.

The early intervention services that may be provided for these children and their families include early identification and screening, multidisciplinary evaluations, case management services, family training, counseling and home visits, psychological services, speech pathology and audiology, and occupational and physical therapy. All evaluations performed as part of early intervention services shall be appropriate to the individual child's age and development.

- (13a) b) 'Eligible psychologist' means a licensed practicing psychologist who has at least two years' clinical experience.
- (14) 'Facility' means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:
- a. An 'area facility', which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
 - b. A 'licensable facility', which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or developmentally disabled, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all

- outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;
- c. A 'private facility', which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;
 - d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;
 - e. A 'residential facility', which is a 24-hour facility that is not a hospital, including a group home;
 - f. A 'State facility', which is a facility that is operated by the Secretary;
 - g. A '24-hour facility', which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and
 - h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.
- (15) 'Guardian' means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A, 33, or 35A of the General Statutes.
- (16) 'Habilitation' means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.
- (17) 'Incompetent adult' means an adult individual adjudicated incompetent.
- (18) 'Intoxicated' means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.
- (19) 'Law-enforcement officer' means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.
- (20) 'Legally responsible person' means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; or (ii) when applied to a minor, a parent,

guardian, a person standing *in loco parentis*, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment.

- (21) 'Mental illness' means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.
- (22) 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.
- (23) 'Mentally retarded with accompanying behavior disorder' means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.
- (24) 'Next of kin' means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, 'next of kin' means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.
- (25) 'Operating costs' means expenditures made by an area authority in the delivery of services for mental health, developmental disabilities, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.
- (26) Repealed by Session Laws 1987, c. 345, s. 1.
- (27) 'Outpatient treatment' as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain

- semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.
- (28) 'Person' means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.
 - (29) 'Physician' means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.
 - (30) 'Provider of support services' means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.
 - (30a) 'Psychologist' means an individual licensed to practice psychology under Chapter 90. The term 'eligible psychologist' is defined in subdivision (13a).
 - (31) 'Qualified professional' means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, and certified counselors.
 - (32) 'Responsible professional' means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.
 - (33) 'Secretary' means the Secretary of the Department of Human Resources.
 - (34) 'Single portal of entry and exit policy' means an admission and discharge policy for State and area facilities that may be adopted by an area authority and shall be approved by the Secretary before it is in force. The policy and its provisions shall be designed to promote quality client care in and among State and area facilities. Furthermore, the policy shall be designed to integrate otherwise independent facilities into a unified and coordinated system, in which system the area authority shall be responsible for assuring that the individual client

can receive services from the facility that is best able to meet his needs. However, the policy may not be inconsistent with any other provisions of the General Statutes, nor may the policy include the complete exclusion of clients from admission to any specific State or area facility.

- (35) 'Single portal area' means the county or counties that comprise the catchment area of an area authority that has adopted a single portal of entry and exit policy.
- (36) 'Substance abuse' means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. 'Substance abuse' may include a pattern of tolerance and withdrawal.
- (37) 'Substance abuser' means an individual who engages in substance abuse."

Sec. 3. G.S. 122C-112(a) reads as rewritten:

" § 122C-112. *Powers and duties of the Secretary.*

(a) The Secretary shall:

- (1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;
- (2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;
- (3) Operate State facilities and adopt rules pertaining to their operation;
- (4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;
- (5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;
- (6) Adopt rules governing the expenditure of all area authority funds;
- (7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;
- (8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter;
- (9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;

- (10) Promote public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse;
- (11) Administer and enforce rules that are conditions of participation in federal or State financial aid; and
- (12) Carry out ~~G.S. 122C-361~~, G.S. 122C-361; and
- (13) Coordinate and facilitate the development and administration of the early intervention system for eligible infants and toddlers and shall assign among the cooperating agencies the responsibility, including financial responsibility, for services. The Secretary shall be advised by the Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age, established by G.S. 143B-179.5, and may enter into formal interagency agreements to establish the collaborative relationships with the Department of Environment, Health, and Natural Resources, the Department of Public Instruction, other appropriate agencies, and other public and private service providers necessary to administer the system and deliver the services.

The Secretary shall adopt rules to implement the early intervention system, in cooperation with all other appropriate agencies."

Sec. 4. G.S. 122C-146 reads as rewritten:

" § 122C-146. Fee for service.

The area authority and its contractual agencies shall prepare fee schedules for services and shall make every reasonable effort to collect appropriate reimbursement for costs in providing these services from individuals able to pay, including insurance and third-party ~~payment~~, payment, except that individuals may not be charged for services involving multidisciplinary evaluations, intervention plan development, and case management services provided to eligible infants and toddlers and their families. This exemption from charges does not exempt insurers or other third-party payors from being charged for payment for these services. However, no individual may be refused services because of an inability to pay. All funds collected from fees from area authority operated services shall be used for the fiscal operation or capital improvements of the area authority's programs. The collection of fees by an area authority may not be used as justification for reduction or replacement of the budgeted commitment of local tax revenue."

Sec. 5. Article IX of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 14. Handicapped Children, Ages Three to Five.

" § 115C-146.1. Definitions.

The term 'preschool handicapped children' means all handicapped children:

- (1) Who have reached their third birthday and whose parents have requested services from the public schools, which services shall start no later than the beginning of the school year immediately following the children's third birthday;
- (2) Who are not eligible to enroll in public kindergarten; and
- (3) Who, because of permanent or temporary mental, physical, or emotional handicaps, need special education and related services in order to prepare them to benefit from the educational programs provided by the public schools, beginning with kindergarten. This term includes children who are mentally retarded, learning disabled, seriously emotionally disturbed, autistic, cerebral palsied, orthopedically impaired, hearing impaired, speech impaired, blind or visually impaired, multiply handicapped, or other health impaired. All evaluations performed pursuant to this Part shall be appropriate to the individual child's age and development.

" § 115C-146.2. Entitlement to services.

Preschool handicapped children are entitled, at no cost to their parents or guardians, to individualized programs specifically designed to meet their unique needs for special education and related services.

" § 115C-146.3. Obligation to provide services.

(a) The General Assembly finds:

- (1) That preschool handicapped children will benefit from the special education and related services required by this Part;
- (2) That the General Assembly has evaluated the known needs of the State and has endeavored to satisfy those needs in comparison to the social and economic problems of the State;
- (3) That the funds appropriated to serve these preschool handicapped children are a reasonable amount to provide such children with special education and related services; and
- (4) That, therefore, (i) State funds appropriated to implement this Part are the only State funds for public schools that may be used to provide special education and related services to preschool handicapped children; and (ii) preschool handicapped children will continue to be served by all other State funds they are otherwise entitled to.

(b) The Department of Public Education shall cause local school administrative units to make available special education and related

services to all preschool handicapped children whose parents or guardians request these services.

(c) State funds appropriated to implement the provisions of this Part shall be used to supplement and not supplant existing federal, State, and local funding for the public schools.

(d) Related services provided under this Part shall be provided by qualified services providers. The term 'qualified services provider' means a person who meets State standards for licensure or State Board of Education standards for certification for a specific profession or discipline.

To the extent that the State Board of Education standards include provisions for certification that are less than the standard for certification or licensure for a specific profession, the Department of Public Instruction may certify individuals on a temporary or provisional basis, provided that the State Board of Education shall establish a comprehensive plan and reasonable time lines to ensure that only professionals who meet the appropriate standard for licensure or certification may be employed in the future.

" § 115C-146.4. Rules.

The State Board of Education shall adopt rules implementing this Part, including rules necessary in order to receive federal funding pursuant to Part B of the Education of the Handicapped Act, 20 U.S.C. § 1400 *et seq.* These rules shall include a provision that, where a local education agency finds that appropriate services are available from other public agencies or private organizations, that local education agency shall, in accordance with G.S. 115C-149, contract for those services rather than provide them directly. These rules shall also include a provision that, where a local education agency finds that a child is already receiving appropriate services, that local education agency shall continue those services as long as appropriate."

Sec. 6. Sections 1 through 4 of this act shall become effective July 1, 1990, and Section 5 of this act shall become effective July 1, 1991, if and only if specific funds are appropriated for the specific programs established by this act. Funds appropriated for the 1990-91 fiscal year or for any fiscal year in the future do not constitute any entitlement to services beyond those provided for that fiscal year. Nothing in this act creates any rights except to the extent that funds are appropriated by the State to implement its provisions from year to year and nothing in this act obligates the General Assembly to appropriate any funds to implement its provisions.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

AN ACT TO MAKE CLARIFYING, CONFORMING, AND
TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATING
TO ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-58(b)(2) reads as rewritten:

"(2) The Department of Human ~~Resources~~ Resources, the Department of Environment, Health, and Natural Resources, or the Department of Agriculture for the sale of serums, vaccines, and other like products."

Sec. 2. G.S. 90-85.34A(a)(3) reads as rewritten:

"(3) Only prescription drugs and devices contained in a formulary recommended by the Department of ~~Human Resources~~ Environment, Health, and Natural Resources and approved by the Board shall be dispensed;"

Sec. 3. G.S. 104G-21(e) is amended by deleting "(c)" and substituting "(d)".

Sec. 4. G.S. 113-202.1(c), as enacted by Chapter 423 of the 1989 Session Laws, is amended by deleting "G.S. 113A-202(d)" and inserting in lieu thereof "G.S. 113-202(d)".

Sec. 5. G.S. 104E-6.1(a) is amended by deleting the word "landfill" each time it occurs and substituting the word "disposal".

Sec. 6. G.S. 130A-101 is amended by adding a new subsection to read:

"(g) Each parent shall provide his or her social security number to the person responsible for preparing and filing the certificate of birth."

Sec. 7. The catch line of G.S. 130A-291 reads as rewritten:

"§ 130A-291. ~~Solid Waste Unit in Department~~ Division of Solid Waste Management."

Sec. 8. G.S. 130A-291(a) reads as rewritten:

"(a) For the purpose of promoting and preserving an environment that is conducive to public health and welfare, and preventing the creation of nuisances and the depletion of our natural resources, the Department shall maintain ~~an appropriate administrative unit~~ a Division of Solid Waste Management to promote sanitary processing, treatment, disposal, and statewide management of solid waste and the greatest possible recycling and recovery of resources, and the Department shall employ and retain such qualified personnel as may be necessary to effect such purposes. It is the purpose and intent of the State to be and remain cognizant not only of its responsibility to authorize and establish the statewide solid waste management program.

but also of its responsibility to monitor and supervise, through the Department, the activities and operations of units of local government implementing a permitted solid waste management facility serving a specified geographic area in accordance with a solid waste management plan."

Sec. 9. G.S. 130A-310.5(c), as amended by Section 4 of Chapter 286 of the 1989 Session Laws, is amended by deleting the phrase "Emergency Hazardous Waste Site Remedial Fund" and substituting in lieu thereof "Emergency Response Fund".

Sec. 10. G.S. 130A-310.7(a), as amended by Section 6 of Chapter 286 of the 1989 Session Laws, is amended by deleting the semicolon following the word "substance" and substituting a comma in lieu thereof.

Sec. 11. G.S. 130A-310.22, as enacted by Section 10 of Chapter 286 of the 1989 Session Laws, is amended by deleting the phrase "42 U.S.C. § 9604(b)(9)" and inserting in lieu thereof "42 U.S.C. § 9604(c)(9)".

Sec. 12. G.S. 130A-342(c), as enacted by Chapter 764 of the 1989 Session Laws, reads as rewritten:

"(c) The performance of individual aerobic treatment plants is to be documented by the counties and sent to the ~~Department of Human Resources or the~~ Department of Environment, Health, and Natural ~~Resources as appropriate.~~ Resources."

Sec. 13. G.S. 130B-15(e), as enacted by Chapter 168 of the 1989 Session Laws, reads as rewritten:

"(e) The Commission shall provide through its own personnel, private contractors, cooperative agreement with other governmental agencies, or any combination thereof, any active maintenance or remedial actions that may be required. Payment for the cost thereof shall be made from the Long-Term Care Fund established pursuant to ~~G.S. 130B-16,~~ G.S. 130B-17."

Sec. 14. G.S. 143-439(b) reads as rewritten:

"(b) The Pesticide Advisory Committee shall consist of: three practicing farmers; one conservationist (at large); one ecologist (at large); one representative of the pesticide industry; one representative of agribusiness (at large); one local health director; three members of the North Carolina State University School of Agriculture and Life Sciences, at least one of which shall be from the area of wildlife or biology; one member representing the North Carolina Department of Agriculture; one member representing the Department of Environment, Health, and Natural Resources; ~~the State Health Director;~~ Director or his designee; one representative of a public utility or railroad company which uses pesticides; one representative of the Board of Transportation; one member of the North Carolina

Agricultural Aviation Association; one member of the general public (at large); one member actively engaged in forest pest management; and one member representing the Division of Solid Waste Management Division of the Department of Environment, Health, and Natural Resources. Each State agency represented on the Committee shall be appointed by the head of the agency. Other members of the Committee shall be appointed by the Board."

Sec. 15. Subsection (a) of Section 5 of Chapter 426 of the 1989 Session Laws reads as rewritten:

"(a) The Environmental Management Commission shall adopt water supply watershed classifications and applicable management requirements as required by ~~G.S. 143-214.4(b)~~ G.S. 143-214.5(b) no later than 1 January 1991."

Sec. 16. Subsection (b) of Section 5 of Chapter 426 of the 1989 Session Laws reads as rewritten:

"(b) The Environmental Management Commission shall publish the proposed classification of all existing water supply watersheds under the classifications adopted pursuant to ~~G.S. 143-214.4(b)~~ G.S. 143-214.5(b) no later than 1 January 1991. The Environmental Management Commission shall complete the classification of all existing water supply watersheds no later than 1 January 1992."

Sec. 17. G.S. 143-215.1(b1)(4), as enacted by Section 2 of Chapter 354 of the 1989 Session Laws, reads as rewritten:

"(4) Requirements of subsection (a) of this section that the Department review and ~~approval~~ approve of each individual facility."

Sec. 18. G.S. 143-350 is amended by deleting "G.S. 143-214" and substituting in lieu thereof "G.S. 143B-282".

Sec. 19. (a) G.S. 143B-279.4 reads as rewritten:

"§ 143B-279.4. *The Department of Environment, Health, and Natural Resources -- Secretary; Deputy Secretaries.*

(a) The Secretary ~~of the Department~~ of Environment, Health, and Natural Resources shall be the head of the Department.

(b) The Secretary may appoint two Deputy Secretaries."

(b) The Revisor of Statutes shall delete every reference to the Secretary of the Department of Environment, Health, and Natural Resources, the Secretary of the North Carolina Department of Environment, Health, and Natural Resources, any such similar reference, and any reference to any predecessor officers in any portion of the General Statutes and substitute, as appropriate and consistent with this act and Chapter 727 of the 1989 Session Laws, the phrase "Secretary of Environment, Health, and Natural Resources."

Sec. 20. 'G.S. 159I-3(a)(6) as enacted by Chapter 756 of the 1989 Session Laws reads as rewritten:

"(6) 'Division' means the ~~Division of Health Services~~ Division of Solid Waste Management of the Department of Environment, Health, and Natural Resources and any successor of said Division."

Sec. 21. G.S. 159I-7(b), as enacted by Chapter 756 of the 1989 Session Laws, reads as rewritten:

"(b) Moneys in the Solid Waste Management Loan Fund may be invested in the same manner as permitted for investments of funds belonging to the State or held in the State treasury. Interest earnings derived from such investments shall be credited to the Fund, credited to such other use as may be provided in a trust agreement or resolution securing any bonds or notes issued under the provisions of this Chapter, or credited to such other use, including the payment of administrative expenses of the Agency, the costs of research for solid waste management programs and the making of grants for such research, as may be directed by the Board.

(b1) In connection with solid waste research to be contracted for by the ~~Solid Waste Branch, Division, the Secretary of the Department to which that Branch is assigned, statutorily,~~ Environment, Health, and Natural Resources shall negotiate, with the Board of the Agency, a memorandum of agreement which shall contain necessary rules and provisions for certifying that proper competitive bid procedures, and when appropriate, proper sole source bid procedures, for contracts have been executed in connection with a Request for Proposals (RFP); and, which shall state that a previously determined one-to-one match requirement from private sector sources has been met in accordance with rules and provisions set out in the memorandum of agreement, and that the Secretary is ready to award a contract for a specified amount. The Treasurer, at the direction of the board, shall certify that funds are available and that the purpose of the contract is consistent with provisions for the use of solid waste loan program proceeds."

Sec. 22. G.S. 159I-15(d) is amended in the second sentence by deleting the phrase "place or place" and substituting in lieu thereof the phrase "place or places".

Sec. 23. G.S. 159I-15(e) is amended in the third paragraph by deleting the word "at" as it appears in the phrase "such price or prices at the Local Government Commission shall determine" and substituting in lieu thereof the word "as".

Sec. 24. G.S. 159I-16(c) is amended in the second sentence by deleting the word "noticed" as it appears in the phrase "irrespective of whether such parties have noticed thereof" and substituting in lieu thereof the word "notice".

Sec. 25. G.S. 159I-16(d) is amended by inserting a comma after the word "Agency" as it appears in the phrase "costs of operation of the Agency".

Sec. 26. G.S. 159I-30(h) is amended:

(a) In the first sentence by deleting the word "form" as it appears in the phrase "40 years form their date" and substituting in lieu thereof the word "from"; and

(b) In the second sentence by deleting the phrase "place or place" and substituting in lieu thereof the phrase "place or places".

Sec. 27. Section 2 of Chapter 129 of the 1989 Session Laws reads as rewritten:

"Sec. 2. This act applies only to ~~that portion~~ the inland waters of the Black River in Sampson, Pender, and Bladen Counties between Clear Run Bridge at Highway 411 and its junction with the Cape Fear River, and to that portion of South River in Sampson and Bladen Counties from Ennis Bridge at Highway 1007 to its junction with the Black River."

Sec. 28. Section 1 of Chapter 764 of the 1989 Session Laws is repealed.

Sec. 29. Subsection (1) of Section 2 of Chapter 146 of the 1989 Session Laws reads as rewritten:

"(1) ~~That certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township more particularly described as follows: BEGINNING at a point which is located north 39° 07' 08" 67.86 feet from an iron pipe having a NC coordinate value of X-2996057.363 and Y-823796.892, running from said beginning point south 39° 07' 08" 15 feet to an iron pipe; thence north 49° 10' 51" east 47.98 feet to an iron pipe in the edge of the right-of-way of the U.S. 158 Bypass; thence southeasterly along the aforementioned right-of-way 15 feet to a point; thence south 49° 10' 51" west 47.98 feet to the point of beginning and containing 719.7 square feet more or less, That certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, more particularly described as follows: Beginning at an iron rod which is located North 39°07'08" West 74.96 feet from an iron pipe having a NC Coordinate value of X-2996057.363 and Y-823796.892, said iron rod also being located in a common property line between the State of North Carolina and R. M. Ritchie, et al.; thence running from said beginning point South 39°07'08" East 10 feet to a point; thence North 49°10'51" East 47.98 feet to a point in the right-of-way of U.S. 158 Bypass; thence northwesterly along the~~

aforementioned right-of-way 10 feet to an iron rod; thence South $49^{\circ}10'51''$ West 47.98 feet to the point and place of beginning and containing 479.80 square feet more or less, and as drawn out by the Design and Development Section of the Division of Parks and Recreation on a map dated November 8, 1988."

Sec. 30. G.S. 143-260.10(3) reads as rewritten:

"(3) All lands within the boundaries of Jockey's Ridge State Park as of April 4, 1989, with the exception of the following tract: ~~That certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, more particularly described as follows: BEGINNING at a point which is located north $39^{\circ}07'08''$ 67.86 feet from an iron pipe having a NC coordinate value of X-2996057.363 and Y-823796.892, running from said beginning point south $39^{\circ}07'08''$ 15 feet to an iron pipe; thence north $49^{\circ}10'51''$ east 47.98 feet to an iron pipe in the edge of the right-of-way of the U.S. 158 Bypass; thence southeasterly along the aforementioned right-of-way 15 feet to a point; thence south $49^{\circ}10'51''$ west 47.98 feet to the point of beginning and containing 719.7 square feet more or less, That certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, more particularly described as follows: Beginning at an iron rod which is located North $39^{\circ}07'08''$ West 74.96 feet from an iron pipe having a NC Coordinate value of X-2996057.363 and Y-823796.892, said iron rod also being located in a common property line between the State of North Carolina and R. M. Ritchie, et al.; thence running from said beginning point South $39^{\circ}07'08''$ East 10 feet to a point; thence North $49^{\circ}10'51''$ East 47.98 feet to a point in the right-of-way of U.S. 158 Bypass; thence northwesterly along the aforementioned right-of-way 10 feet to an iron rod; thence South $49^{\circ}10'51''$ West 47.98 feet to the point and place of beginning and containing 479.80 square feet more or less, and as drawn out by the Design and Development Section of the Division of Parks and Recreation on a map dated November 8, 1988."~~

Sec. 31. G.S. 143-279.3 is rewritten to read:

"§ 143B-279.3. *Department of Environment, Health, and Natural Resources -- structure.*

(a) All functions, powers, duties, and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Department of Environment, Health,

and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

- (1) Radiation Protection Section, Division of Facility Services, Department of Human Resources.
- (2) Division of Health Services, Department of Human Resources.
- (3) State Center for Health Statistics, Department of Human Resources.
- (4) Coastal Management Division, Department of Natural Resources and Community Development.
- (5) Environmental Management Division, Department of Natural Resources and Community Development.
- (6) Forest Resources Division, Department of Natural Resources and Community Development.
- (7) Land Resources Division, Department of Natural Resources and Community Development.
- (8) Marine Fisheries Division, Department of Natural Resources and Community Development.
- (9) Parks and Recreation Division, Department of Natural Resources and Community Development.
- (10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.
- (11) Water Resources Division, Department of Natural Resources and Community Development.
- (12) North Carolina Zoological Park, Department of Natural Resources and Community Development.
- (13) Albemarle-Pamlico Study.

(b) All functions, powers, duties, and obligations heretofore vested in the following commissions, boards, councils, and committees of the following departments are hereby transferred to and vested in the Department of Environment, Health, and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

- (1) Governor's Waste Management Board, Department of Human Resources.
- (2) Radiation Protection Commission, Department of Human Resources.
- (3) Commission for Health Services, Department of Human Resources.
- (4) Water Treatment Facility Operators Board of Certification, Department of Human Resources.
- (5) Council on Sickle Cell Syndrome, Department of Human Resources.
- (6) Perinatal Health Care Programs Advisory Council, Department of Human Resources.

- (7) Governor's Council on Physical Fitness and Health, Department of Human Resources.
 - (8) Commission of Anatomy, Department of Human Resources.
 - (9) Coastal Resources Commission, Department of Natural Resources and Community Development.
 - (10) Environmental Management Commission, Department of Natural Resources and Community Development.
 - (11) Air Quality Council, Department of Natural Resources and Community Development.
 - (12) Wastewater Treatment Plant Operators Certification Commission, Department of Natural Resources and Community Development.
 - (13) Forestry Council, Department of Natural Resources and Community Development.
 - (14) North Carolina Mining Commission, Department of Natural Resources and Community Development.
 - (15) Advisory Committee on Land Records, Department of Natural Resources and Community Development.
 - (16) Marine Fisheries Commission, Department of Natural Resources and Community Development.
 - (17) Parks and Recreation Council, Department of Natural Resources and Community Development.
 - (18) Board of Trustees of the Recreation and Natural Trust Fund, Department of Natural Resources and Community Development.
 - (19) North Carolina Trails Committee, Department of Natural Resources and Community Development.
 - (20) Sedimentation Control Commission, Department of Natural Resources and Community Development.
 - (21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.
 - (22) North Carolina Zoological Park Council, Department of Natural Resources and Community Development.
- (c)(1) There is hereby created a division within the environmental area of the Department of Environment, Health, and Natural Resources to be named the Division of Radiation Protection. All functions, powers, duties, and obligations of the Radiation Protection Section of the Division of Facility Services of the Department of Human Resources are transferred in their entirety to the Radiation Protection Division of the Department of Environment, Health, and Natural Resources.

- (2) There is hereby created a division within the environmental area of the Department of Environment, Health, and Natural Resources to be named the Division of Solid Waste Management. All functions, powers, duties, and obligations of the Solid Waste Management Section of the Division of Health Services of the Department of Human Resources are transferred in their entirety to the Division of Solid Waste Management of the Department of Environment, Health, and Natural Resources.

(d) The Department of Environment, Health, and Natural Resources is vested with all other functions, powers, duties, and obligations as are conferred by the Constitution and laws of this State."

Sec. 32. G.S. 143B-432 is rewritten to read:

"§ 143B-432. *Transfers to Department of Economic and Community Development.*

(a) The Division of Economic Development of the Department of Natural and Economic Resources, the Science and Technology Committee of the Department of Natural and Economic Resources, the Science and Technology Research Center of the Department of Natural and Economic Resources, and the North Carolina National Park, Parkway and Forests Development Council of the Department of Natural and Economic Resources are each hereby transferred to the Department of Economic and Community Development by a Type I transfer, as defined in G.S. 143A-6.

(b) All functions, powers, duties, and obligations heretofore vested in the following subunits of the Department of Natural Resources and Community Development are hereby transferred to and vested in the Department of Economic and Community Development by a Type I transfer as defined in G.S. 143A-6:

(1) Community Assistance Division.

(2) Employment and Training Division.

(c) All functions, powers, duties, and obligations heretofore vested in the following councils of the Department of Natural Resources and Community Development are hereby transferred to and vested in the Department of Economic and Community Development by a Type II transfer as defined in G.S. 143A-6:

(1) Community Development Council.

(2) Job Training Coordinating Council."

Sec. 33. Sections 31, 32, and 33 of this act are effective 1 July 1989. Sections 223, 224, 226, and 227 of Chapter 727 of the 1989 Session Laws and Sections 9, 17, and 22 of Chapter 751 of the 1989 Session laws apply to this section.

Sec. 34. (a) A new chapter is added to the General Statutes to be entitled:

"Chapter 108B.
"Community Action Programs."

(b) Article 1 of Chapter 108B of the General Statutes (G.S. 108B-1 through G.S. 108B-20) is reserved for future codification purposes.

(c) Article 1D of Chapter 113 of the General Statutes (G.S. 113-28.21 through G.S. 113-28.26) is recodified as Article 2 of Chapter 108B of the General Statutes (G.S. 108B-21 through G.S. 108B-26).

Sec. 35. G.S. 113-28.23 reads as rewritten:

"§ ~~113-28.23.~~ 108B-23. Designation of administering agency powers and responsibilities.

(a) For purposes of this Article, 'Department' means the Department of ~~Economic and Community Development~~ Human Resources and 'Secretary' means the Secretary of ~~Economic and Community Development~~ Human Resources.

(b) The Department of ~~Economic and Community Development~~ is directed to carry out the purposes and provisions of this Article. In carrying out this directive, the Secretary of the ~~Department~~ shall promulgate rules consistent with the purposes and provisions of this Article."

Sec. 36. G.S. 150B-1(d)(3) reads as rewritten:

"(3) The Department of Human Resources is exempt from this Chapter in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes. The Department of Human Resources ~~is also~~ and the Department of Environment, Health, and Natural Resources are exempt from Article 3 of this Chapter in complying with the procedural safeguards mandated by the Section 680 of Part H of P.L. 99-457 as amended (Education of the Handicapped Act Amendments of 1986)."

Sec. 37. G.S. 130A-342(c) reads as rewritten:

"(c) The performance of individual aerobic treatment plants is to be documented by the counties and sent to the ~~Department of Human Resources or the Department of Environment, Health, and Natural Resources as appropriate.~~ Resources."

Sec. 38. G.S. 104G-13(c) and (d) read as rewritten:

"(c) The approval of the Authority under this section is in addition to the approval of the Department of ~~Human Resources~~ Environment, Health, and Natural Resources in accordance with the rules and regulations of the Commission.

(d) Upon proper closure, the Authority shall assume responsibility for a low-level radioactive waste disposal facility site during the

institutional care period and shall release the operator from further responsibility, subject to approval by the Department of ~~Human Resources~~ Environment, Health, and Natural Resources of the transfer of the license to the Authority."

Sec. 39. G.S. 104G-21(f) reads as rewritten:

"(f) The Board shall serve as the arbitrator or shall appoint the arbitrator of any issue submitted for arbitration under this section."

Sec. 40. G.S. 130B-21(f) reads as rewritten:

"(f) The Board shall serve as the arbitrator or shall appoint the arbitrator of any issue submitted for arbitration under this section."

Sec. 41. G.S. 104E-8 reads as rewritten:

"§ 104E-8. *Radiation Protection Commission -- Members; selections; removal; compensation; quorum; services.*

(a) The Commission shall consist of ~~40~~ 11 voting public members and 10 nonvoting ex officio members. The ~~40~~ 11 voting public members of the Commission shall be appointed by the Governor as follows:

- (1) One member who shall be actively involved in the field of environmental protection;
- (2) One member who shall be an employee of one of the licensed public utilities involved in the generation of power by atomic energy;
- (3) One member who shall have experience in the field of atomic energy other than power generation;
- (4) One member who shall be a scientist or engineer from the faculty of one of the institutions of higher learning in the State;
- (5) One member who shall have recognized knowledge in the field of radiation and its biological effects from the North Carolina Medical Society;
- (6) One member who shall have recognized knowledge in the field of radiation and its biological effects from the North Carolina Dental Society;
- (7) One member who shall have recognized knowledge in the field of radiation and its biological effects from the State at large;
- (8) One member who shall have recognized knowledge in the field of radiation and its biological effects and who shall be a practicing hospital administrator from the North Carolina Hospital Association;
- (9) One member who shall have recognized knowledge in the field of radiation and its biological effects from the North Carolina Chiropractic Association;

- (10) One member who shall have recognized knowledge in the clinical application of radiation, shall be a practicing radiologic technologist from the North Carolina Society of Radiologic Technologists, and shall be certified by the American Registry of Radiologic Technologists;
- (11) One member who shall have recognized knowledge in the clinical application of radiation and shall be a practicing podiatrist licensed by the North Carolina State Board of Podiatry Examiners.

(b) Public members so appointed shall serve terms of office of four years. Four of the initial members shall be appointed for two years, three members for three years, and three members for four years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a public member shall be for the balance of the unexpired term. At the expiration of each public member's term, the Governor shall reappoint or replace the member with a member of like qualifications. At its first meeting on or after July first of each year, the Commission shall designate by election one of its public members as chairman and one of its public members as vice-chairman to serve through June thirtieth of the following year.

(c) The 10 ex officio members shall be appointed by the Governor, shall be members or employees of the following State agencies or their successors, and shall serve at the Governor's pleasure:

- (1) The Utilities Commission;
- (2) The Commission for Health Services;
- (3) The Environmental Management Commission;
- (4) The Board of Transportation;
- (5) ~~The Division of Civil Preparedness of the Department of the Military and Veterans Affairs; Emergency Management of the Department of Crime Control and Public Safety;~~
- (6) ~~The radiation protection program within the Department of Human Resources; Division of Radiation Protection of the Department;~~
- (7) The Department of Labor;
- (8) The Industrial Commission;
- (9) The Department of Insurance;
- (10) The Medical Care Commission.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13.

(e) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the public members of the Commission shall constitute a quorum for the transaction of business.

(g) All clerical and other services required by the Commission shall be supplied by the Secretary of the ~~Department of Human Resources, Department.~~"

Sec. 42. G.S. 153A-285 reads as rewritten:

"§ 153A-285. *Prerequisites to acquisition of water, water rights, etc.*

The word 'authority' as used in G.S. 162A-7(b) through (f) includes counties and cities acting jointly or through joint agencies to provide water services or sewer services or both. No county or city acting jointly and no joint agency may divert water from one stream or river to another nor institute any proceeding in the nature of eminent domain to acquire water, water rights, or lands having water rights attached thereto until the diversion or acquisition is authorized by a certificate from the ~~Board of Water and Air Resources~~ Environmental Management Commission pursuant to G.S. 162A-7. Any proceeding to secure a certificate from the ~~Board~~ Environmental Management Commission shall be governed by the provisions of G.S. 162A-7(b) through 162A-7(f)."

Sec. 43. G.S. 162A-2(2) reads as rewritten:

"(2) ~~The word 'Board' shall mean the Board of Water Commissioners of the State of North Carolina or the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this Article to the Board shall be given by law. The word 'Commission' shall mean the Environmental Management Commission.~~"

Sec. 44. G.S. 162A-7 reads as rewritten:

"§ 162A-7. *Prerequisites to acquisition of water, etc., by eminent domain.*

(a) No authority shall institute proceedings in the nature of eminent domain to acquire water, water rights, or lands having water rights attached thereto without first securing from the ~~Board~~ Commission a certificate authorizing such acquisition.

(b) An authority seeking such certificate shall petition the ~~Board~~ Commission therefor in writing, which petition shall include a description of the waters or water rights involved, the plans for impounding or diverting such waters, and the names of riparian owners affected thereby insofar as known to the authority. Upon receipt of such petition, the ~~Board~~ Commission shall hold public hearing thereon after giving at least 30 days' written notice thereof to known affected riparian owners and notice published at least once each week for two successive weeks in a newspaper or newspapers of general circulation in each county in which lower riparian lands lie.

(c) The ~~Board~~ Commission shall issue certificates only to projects which it finds to be consistent with the maximum beneficial use of the water resources in the State and shall give paramount consideration to the statewide effect of the proposed project rather than its purely local or regional effect. In making this determination, the ~~Board~~ Commission shall specifically consider:

- (1) The necessity of the proposed project;
- (2) Whether the proposed project will promote and increase the storage and conservation of water;
- (3) The extent of the probable detriment to be caused by the proposed project to the present beneficial use of water in the affected watershed and resulting damages to present beneficial users;
- (4) The extent of the probable detriment to be caused by the proposed project to the potential beneficial use of water on the affected watershed;
- (5) The feasibility of alternative sources of supply to the petitioning authority and the comparative cost thereof;
- (6) The extent of the probable detriment to be caused by the use of alternative sources of supply to present and potential beneficial use of water on the watershed or watersheds affected by such alternative sources of supply;
- (7) All other factors as will, in the ~~Board's~~ Commission's opinion, produce the maximum beneficial use of water for all in all areas of the State affected by the proposed project or alternatives thereto.

~~(c1) Upon the considerations above set forth, set out is subsection (c) of this section, the Board Commission may grant its certificate in whole or in part or it may refuse the same.~~

(d) At the public hearing provided for in subsection (b) above the ~~Board~~ Commission shall hear evidence from the authority and any others in support of its petition and from all persons opposed thereto.

(e) At any hearing authorized by this section, the ~~Board~~ Commission shall have power to administer oaths; to take testimony; to issue subpoenas and compel the attendance of witnesses, which shall be served in the same manner as subpoenas issued by the superior courts of the State; and to order the taking of depositions in the same manner as depositions are taken for use in the superior court.

(f) Any final order or decision of the ~~Board~~ Commission in administering the provisions of this section shall be subject to judicial review at the instance of any person or authority aggrieved by such order or decision by complying with the provisions of ~~Article 33,~~

~~Chapter 143 of the General Statutes of North Carolina. Article 4 of Chapter 150B of the General Statutes.~~"

Sec. 45. G.S. 162A-9 reads as rewritten:

" § 162A-9. Rates and charges; contracts for water or services; deposits; delinquent charges.

(a) Each authority shall fix, and may revise from time to time, reasonable rates, fees and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts thereof owned or operated by such authority. Such rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission or other agency of the State or of any political subdivision. Such rates, fees and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all ~~times~~ times:

- (1) To pay the cost of maintaining, repairing and operating the systems or parts thereof owned or operated by the authority, including reserves for such purposes, and including provision for the payment of principal of and interest on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and
- (2) To pay the principal of and the interest on all bonds issued by the authority under the provisions of this Article as the same shall become due and payable and to provide reserves therefor.

(b) Notwithstanding any of the foregoing provisions of this section, the authority may enter into contracts relating to the collection, treatment or disposal of sewage or the purchase or sale of water which shall not be subject to revision except in accordance with their terms.

(c) In order to insure the payment of such rates, fees and charges as the same shall become due and payable, the authority may, in addition to any other remedies which it may ~~have~~ have:

- (1) Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent rates, fees and charges, and
- (2) At the expiration of 30 days after any such rates, fees and charges become delinquent, discontinue supplying water or the services and facilities of any water system or sewer system of the authority."

Sec. 46. G.S. 162A-15 reads as rewritten:

" § 162A-15. Services to authority by private water companies; records of water taken by authority; reports to ~~Board of Water Commissioners~~, the Commission.

Each private water company which is supplying water to the owners, lessees or tenants of real property which is or will be served by any sewer system of an authority is authorized to act as the billing and collecting agent of the authority for any rates, fees or charges imposed by the authority for the services rendered by such sewer system. Any such company shall, if requested by an authority furnish to the authority copies of its regular periodic meter reading and water consumption records and other pertinent data as may be required for the authority to act as its own billing and collecting agent. The authority shall pay to such water company the reasonable additional cost of clerical services and other expenses incurred by the water company in rendering such services to the authority. The authority shall by means of suitable measuring and recording devices and facilities record the quantity of water taken daily by it from any stream or reservoir and make monthly reports of such daily recordings to the ~~Board of Water Commissioners of the State of North Carolina, Commission."~~

Sec. 47. G.S. 153A-430, as enacted by Chapter 888 of the 1989 Session Laws, 1990 Regular Session, reads as rewritten:

"§ 153A-430. ~~Controlling provisions; compliance~~ Compliance with other law.

~~(a) Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling.~~

(b) An authority created pursuant to this Article shall comply with all applicable federal and State laws, regulations, and rules, including specifically those enacted or adopted for the management of solid waste or for the protection of the environment or public health."

Sec. 47.1. Section 2 of Chapter 888 of the 1989 Session Laws, 1990 Regular Session, is amended by inserting "(a)" between "159I-3" and "(13)" in the citation in the first line thereof.

Sec. 48. G.S. 143-215.6(b)(4) reads as rewritten:

"(4) For purposes of this subsection, the term 'person' shall mean, in addition to the definition contained in G.S. ~~143-213, 143-212,~~ any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision."

Sec. 49. G.S. 143-215.114(b)(4) reads as rewritten:

"(4) For purposes of this subsection, the term 'person' shall mean, in addition to the definition contained in G.S. ~~143-213,~~ 143-212, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision."

Sec. 50. G.S. 130A-29 reads as rewritten:

"§ 130A-29. *Commission for Health Services -- creation, powers and duties.*

(a) The Commission for Health Services ~~of the Department of Environment, Health, and Natural Resources~~ is created with the authority and duty to adopt rules to protect and promote the public health.

(b) The Commission ~~for Health Services~~ is authorized to adopt rules necessary to implement the public health programs administered by the Department ~~of Environment, Health, and Natural Resources~~ as ~~provided in Chapter 130A of the General Statutes,~~ as provided in this Chapter.

(c) The Commission ~~for Health Services~~ shall adopt rules:

- (1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.
- (2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o);
- (3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522;
- (4) Establishing requirements for the sanitation of local confinement facilities as provided in G.S. 153-53.4; Part 2 of Article 10 of Chapter 153A of the General Statutes; and
- (5) Governing environmental impact statements and information required in applications to determine eligibility for water supply systems under the provisions of the North Carolina Clean Water Bond Act, Act of 1977, Chapter 677 of the 1977 Session Laws.

(d) The Commission is authorized to create:

- (1) Metropolitan water districts as provided in G.S. 162A-33;

(2) Sanitary districts as provided in Part 2 of Article 2 of ~~Chapter 130A of the General Statutes; this Chapter; and~~

(3) Mosquito control districts as provided in Part 2 of Article 12 of ~~Chapter 130A of the General Statutes, this Chapter.~~

(e) Rules adopted by the Commission for Health Services shall be enforced by the ~~Department of Environment, Health, and Natural Resources, Department."~~

Sec. 51. G.S. 130A-30(a) reads as rewritten:

"(a) The Commission for Health Services of the ~~Department of Environment, Health, and Natural Resources~~ shall consist of 12 members, four of whom shall be elected by the North Carolina Medical Society and eight of whom shall be appointed by the Governor."

Sec. 52. G.S. 74-24.4(c) reads as rewritten:

"(c) The Division of Health Services of the Department of ~~Human Resources~~ Environment, Health, and Natural Resources shall have primary responsibility for research and the recommendation of health standards to the Commissioner to effectuate the purposes of this Article, and nothing in this subsection shall affect the authority of the Commissioner with respect to the promulgation and enforcement of both safety and health standards."

Sec. 53. G.S. 74-24.4(d) reads as rewritten:

"(d) The procedures utilized for the adoption and promulgation of safety and health standards, including notice and public hearings, shall be in accordance with the Administrative Procedure Act of North Carolina ~~as the same appears~~ as set out in Chapter 150A 150B of the General Statutes."

Sec. 54. G.S. 74-82 reads as rewritten:

"§ 74-82. *Suspension, revocation or modification of permit.*

The Department may revoke, suspend or modify a permit for violations of this Article, any rules promulgated under it, or other terms or conditions of the permit. This authority is subject to the 'Special Provisions on Licensing' of G.S. ~~450A-3, 150B-3.~~"

Sec. 55. The first sentence of G.S. 75A-6(o) reads as rewritten:

"~~The Department of Human Resources is hereby authorized and directed to prepare design standards that will be used as a guide in approving~~ — Commission for Health Services shall adopt rules establishing standards for the approval of sewage treatment devices and holding tanks for marine toilets installed in boats operating on the inland fishing waters of the State as designated by the Wildlife Resources Commission and the inland lake waters of the State."

Sec. 56. The second sentence of G.S. 110-91(2) is amended by deleting "Department of Human Resources" and substituting "Department of Environment, Health, and Natural Resources."

Sec. 57. G.S. 143B-181.9A(d)(1) reads as rewritten:

"(1) One member each appointed by the Secretary of the Department of Human Resources from the Divisions of Aging, ~~of Health Services,~~ of Medical Assistance, of Mental Health, Mental Retardation, and Substance Abuse Services, of Social Services, and one director of an area agency on aging elected from among all the directors of the area agencies on aging. One member appointed by the Secretary of Environment, Health, and Natural Resources from the Division of Health Services."

Sec. 58. G.S. 159G-3(6) reads as rewritten:

"(6) 'Commission for Health Services' means the Commission for Health Services ~~of the Department of Environment, Health, and Natural Resources,~~ created by G.S. 130A-29."

Sec. 59. Except as otherwise provided herein, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

S.B. 1363

CHAPTER 1005

AN ACT TO MODIFY THE TIME ALLOWED FOR FILING CERTAIN PROPERTY TAX APPEALS, TO MAKE THE PENALTY FOR SUBMITTING A BAD CHECK IN PAYMENT OF PROPERTY TAXES THE SAME AS FOR SUBMITTING A BAD CHECK IN PAYMENT OF OTHER TAXES, AND TO MAKE TECHNICAL CORRECTIONS TO THE PROPERTY TAX STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-290(e) reads as rewritten:

"(e) Time Limits for Appeals. ~~A notice of appeal from an order of a board of equalization and review shall be filed with the Property Tax Commission within 30 days after the board of equalization and review has mailed a notice of its decision to the property owner. A notice of appeal from an order of a board of commissioners concerning the listing, appraisal, or assessment of property shall be filed with the Property Tax Commission within 30 days after the board of county commissioners enters the order. A notice of appeal from an order of a board of county commissioners, other than an order adopting a uniform schedule of values, or from a board of equalization and review shall be filed with the Property Tax Commission within 30 days after the date the board mailed a notice of its decision to the property~~

owner. A notice of appeal from an order adopting a schedule of values shall be filed within the time set in subsection (c)."

Sec. 2. G.S. 105-290(g) reads as rewritten:

"(g) What Constitutes Filing. A notice of appeal is considered to be filed with the Property Tax Commission when it is received in the office of the Commission. A notice of appeal submitted to the Property Tax Commission by a means other than United States mail is considered to be filed on the date it is received in the office of the Commission. A notice of appeal submitted to the Property Tax Commission by United States mail is considered to be filed on the date shown on the postmark stamped by the United States Postal Service. If an appeal submitted by United States mail is not postmarked or the postmark does not show the date of mailing, the appeal is considered to be filed on the date it is received in the office of the Commission. A property owner who files an appeal with the Commission has the burden of proving that the appeal is timely."

Sec. 3. G.S. 153A-149(c) reads as rewritten:

"(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to an effective a combined rate of one dollar and fifty cents (\$1.50) on the one hundred dollars (\$100.00) appraised value of property subject to taxation before the application of any assessment ratio. taxation. To find the actual rate limit for a particular county, divide the effective rate limit of one dollar and fifty cents (\$1.50) by the county assessment ratio. Authorized purposes subject to the rate limitation are:

- (1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county assessor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.
- (2) Agricultural Extension. -- To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.
- (3) Air Pollution. -- To maintain and administer air pollution control programs.
- (4) Airports. -- To establish and maintain airports and related aeronautical facilities.
- (5) Ambulance Service. -- To provide ambulance services, rescue squads, and other emergency medical services.

- (6) Animal Protection and Control. -- To provide animal protection and control programs.
- (6a) Arts Programs and Museums. -- To provide for arts programs and museums as authorized in G.S. 160A-488.
- (6b) Auditoriums, coliseums, and convention and civic centers. -- To provide public auditoriums, coliseums, and convention and civic centers.
- (7) Beach Erosion and Natural Disasters. -- To provide for shoreline protection, beach erosion control, and flood and hurricane protection.
- (8) Cemeteries. -- To provide for cemeteries.
- (9) Civil Preparedness. -- To provide for civil preparedness programs.
- (10) Debts and Judgments. -- To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.
- (10a) Defense of Employees and Officers. -- To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.
- (10b) Economic Development. -- To provide for economic development as authorized by G.S. 158-12.
- (11) Fire Protection. -- To provide fire protection services and fire prevention programs.
- (12) Forest Protection. -- To provide forest management and protection programs.
- (13) Health. -- To provide for the county's share of maintaining and administering services offered by or through the county or district health department.
- (14) Historic Preservation. -- To undertake historic preservation programs and projects.
- (15) Hospitals. -- To establish, support and maintain public hospitals and clinics, and other related health programs and ~~facility,~~ facilities, or to aid any private, nonprofit hospital, clinic, related ~~facilities,~~ facility, or other health program or facility.
- (15a) Housing Rehabilitation. -- To provide for personnel costs related to planning and administration of housing rehabilitation programs authorized by G.S. 153A-376. This subdivision only applies to counties with a population of 400,000 or more, according to the most recent decennial federal census.

- (16) Human Relations. -- To undertake human relations programs.
- (16a) Industrial Development. -- To provide for industrial development as authorized by G.S. 158-7.1.
- (17) Joint Undertakings. -- To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.
- (18) Law Enforcement. -- To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.
- (19) Libraries. -- To establish and maintain public libraries.
- (20) Mapping. -- To provide for mapping the lands of the county.
- (21) Medical Examiner. -- To provide for the county medical examiner or coroner.
- (22) Mental Health. -- To provide for the county's share of the cost of maintaining and administering services offered by or through the area mental health, developmental disabilities, and substance abuse authority.
- (23) Open Space. -- To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.
- (24) Parking. -- To provide off-street lots and garages for the parking and storage of motor vehicles.
- (25) Parks and Recreation. -- To establish, support and maintain public parks and programs of supervised recreation.
- (26) Planning. -- To provide for a program of planning and regulation of development in accordance with Article 18 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.
- (27) Ports and Harbors. -- To participate in programs with the North Carolina Ports Authority and provide for harbor masters.
- (27a) Railway Corridor Preservation. -- To acquire property for railroad corridor preservation as authorized by G.S. 160A-498.
- (28) Register of Deeds. -- To provide for the operation of the office of the register of deeds of the county.
- (29) Sewage. -- To provide sewage collection and treatment services as defined in G.S. 153A-274(2).

- (30) Social Services. -- To provide for the public welfare through the maintenance and administration of public assistance programs not required by Chapters 108A and 111 of the General Statutes, and by establishing and maintaining a county home.
- (31) Solid Waste. -- To provide solid waste collection and disposal services, and to acquire and operate landfills.
- (31a) Stormwater. -- To provide structural and natural stormwater and drainage systems of all types.
- (32) Surveyor. -- To provide for a county surveyor.
- (33) Veterans' Service Officer. -- To provide for the county's share of the cost of services offered by or through the county veterans' service officer.
- (34) Water. -- To provide water supply and distribution systems.
- (35) Watershed Improvement. -- To undertake watershed improvement projects.
- (36) Water Resources. -- To participate in federal water resources development projects.
- (37) Armories. -- To supplement available State or federal funds to be used for the construction (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina national guard.
- (38) Railway Corridor Preservation. -- To acquire property for railroad corridor preservation as authorized by G.S. 160A-498."

Sec. 4. G.S. 153A-149(d) reads as rewritten:

"(d) With an approving vote of the people, any county may levy property taxes for any purpose for which the county is authorized by law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (c).

The county commissioners may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 10 days after any other referendum or election to be held in the county and already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the county board of elections. The clerk to the board of commissioners shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the

referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

(1) Shall County be authorized to levy annually a property tax at ~~an effective~~ a rate not in excess of cents on the one hundred dollars (\$100.00) value of property subject to taxation for the purpose of?

(2) Shall County be authorized to levy annually a property tax at a rate not in excess of that which will produce \$..... for the purpose of?

(3) Shall County be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of?

If a majority of those participating in the referendum approve the proposition, the board of commissioners may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the board of commissioners. The board of commissioners shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: 'Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication).' The statement of results shall be filed in the clerk's office and inserted in the minutes of the board.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for supplemental school taxes and except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Counties in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitation set out in subsection (c) at any appropriate level and are not subject to the former voted rate limitation."

Sec. 5. G.S. 153A-149(e) reads as rewritten:

'(e) With an approving vote of the people, any county may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 30 days after any other referendum or election. The referendum shall be conducted by the county board of elections.

The proposition submitted to the voters shall be substantially in the following form: 'Shall the ~~effective~~ property tax rate limitation applicable to County be increased from on the one hundred dollars (\$100.00) value of property subject to taxation to on the one hundred dollars (\$100.00) value of property subject to taxation?'

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the county.'

Sec. 6. G.S. 160A-209(e) reads as rewritten:

'(e) With an approving vote of the people, any city may levy property taxes for any purpose for which the city is authorized by its charter or general law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (d).

The city council may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other city referendum or city election, but may not be otherwise held (i) on the day of any federal, State, district, or county election already validly called or scheduled by law at the time the tax referendum is called, or (ii) within the period of time beginning 30 days before and ending 10 days after the day of any other city referendum or city election already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the same board of elections that conducts regular city elections. A notice of referendum shall be published in accordance with G.S. 163-287. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms.

1. Shall the City/Town of be authorized to levy annually a property tax at ~~an effective~~ a rate not in excess of cents on the one hundred dollars (\$100.00) value of property subject to taxation for the purpose of

(2) Shall the City/Town of _____ be authorized to levy annually a property tax at a rate not in excess of that which will produce \$ _____ for the purpose of _____?

(3) Shall the City/Town of _____ be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of _____?

If a majority of those participating in the referendum approve the proposition, the city council may proceed to levy annually a property tax within the limitations (if any) described in the proposition. ~~Unless otherwise provided in the proposition submitted to the voters, a vote on a property tax levy not to exceed a specified rate per one hundred dollars (\$100.00) value of property subject to taxation at a vote on an effective rate per one hundred dollars (\$100.00) of appraised value of property before the application of an assessment ratio.~~

The board of elections shall canvass the referendum and certify the results to the city council. The council shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the council.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1975, on the levy of property taxes is not valid for the purposes of this subsection. Cities in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitations set out in subsection (d) at any appropriate level and are not subject to the former voted rate limitation.'

Sec. 7. G.S. 160A-209(f) reads as rewritten:

'(f) With an approving vote of the people, any city may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other city referendum or election, but may not be otherwise held (i) on the day of any federal, State, district, or county election, or (ii) within the period of time beginning 30 days before

and ending 30 days after the day of any other city referendum or city election. The election shall be conducted by the same board of elections that conducts regular city elections.

The proposition submitted to the voters shall be substantially in the following form: 'Shall the ~~effective~~ property tax rate limitation applicable to the City/Town of be increased from on the one hundred dollars (\$100.00) value of property subject to taxation to on the one hundred dollars (\$100.00) value of property subject to taxation?'

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the city."

Sec. 8. G.S. 105-357(b)(2) reads as rewritten:

"(2) Penalty. -- In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving in payment of taxes a check that is returned because of insufficient funds or nonexistence of an account of the drawer ~~shall be~~ is ten percent (10%) of the amount of the ~~check~~, check, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty does not apply if the tax collector finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. This penalty shall be added to and collected in the same manner as the taxes for which the check was given."

Sec. 9. G.S. 105-236(1) reads as rewritten:

"(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department, ~~shall refuse payment upon such check on account of insufficient funds of the drawer in such bank, and such check shall be returned to the Department of Revenue,~~ Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, an additional tax ~~shall be imposed, which additional tax shall be equal to ten percent (10%) of the obligation for the payment of which such check was tendered; Provided, however, that in no case shall the additional tax so imposed be less than one dollar (\$1.00) nor more than two hundred dollars (\$200.00).~~ Provided, further, no additional tax shall be imposed if the Secretary of Revenue shall find that the drawer of such check, at the time it was presented to the drawee, had funds deposited to his credit in any bank of this State sufficient to pay such check, and, by inadvertence, failed to draw the check upon the bank in which he had

~~such funds on deposit, check shall be imposed, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty does not apply if the Secretary of Revenue finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertance, the drawer of the check failed to draw the check on the account that had sufficient funds. The additional tax hereby imposed shall may not be waived or diminished by the Secretary of Revenue. This section shall apply subsection applies to all taxes levied or assessed by the State."~~

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

S.B. 1434

CHAPTER 1006

AN ACT TO ALLOW DUPLIN COUNTY TO CONVEY CERTAIN PROPERTY IN EXCHANGE FOR OTHER PROPERTY, TO ALLOW THE TOWN OF WARSAW TO EXTEND ITS EXTRATERRITORIAL ZONING OVER AN ADDITIONAL AREA, AND TO ELIMINATE THE REQUIREMENT OF A PUBLIC HEARING BY THE COUNTY OF DUPLIN PRIOR TO AN ALREADY EXECUTED CONTRACT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, Duplin County may convey to Elbert Long or his successors in title all property belonging to Duplin County lying north of the brick wall as shown on a map dated March 7, 1990, as surveyed by McDavid Associates, in exchange for all property lying south of the brick wall, said map being included in the minutes of the Duplin County Board of Commissioners by resolution dated June 4, 1990.

Sec. 2. The Town of Warsaw may extend its jurisdiction under Article 19 of Chapter 160A of the General Statutes from one mile as authorized by G.S. 160A-360(a) as follows: On NC Highway 24 West, 1500 feet on each side of the center of NC Highway 24 extending and stopping at the midpoint of the intersection of NC Highway 24 and State Road 1108. On US Highway 117 South, 1500 feet on each side of the center of US Highway 117 extending to and stopping at the midpoint of the intersection of US Highway 117 and State Road 1908.

Sec. 3. G.S. 158-7.1(c) does not apply to:

- (1) The contract between Ernest Taylor, Jr., John W. McCullen, and Verna Taylor, parties of the first part, and Duplin County, party of the second part, entered into January 5, 1989, and recorded at Book 1012, Page 140, Duplin County Registry; or
- (2) The contract between Ernest A. Taylor, party of the first part, and Duplin County, party of the second part, entered into January 5, 1989, and recorded at Book 1012, Page 143, Duplin County Registry.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

S.B. 1481

CHAPTER 1007

AN ACT TO AUTHORIZE HAYWOOD AND PENDER COUNTIES AND SURF CITY TO COLLECT CERTAIN FEES IN THE SAME MANNER AS AD VALOREM TAXES.

The General Assembly of North Carolina enacts:

Section 1. (a) A county may provide that any fee imposed under G.S. 153A-292 may be billed with the ad valorem taxes, may be payable in the same manner as ad valorem taxes, and, in the case of nonpayment, the same remedies may be used by a county to collect such fees as are used to collect delinquent ad valorem taxes.

(b) This section applies to Haywood and Pender Counties only.

Sec. 2. (a) A city may provide that any fee imposed under G.S. 160A-314 for the purpose of G.S. 160A-311(6) may be billed with the ad valorem taxes, may be payable in the same manner as ad valorem taxes, and, in the case of nonpayment, the same remedies may be used by a city to collect such fees as are used to collect delinquent ad valorem taxes.

(b) This section applies to Surf City only.

Sec. 3. This act is effective upon ratification and applies to fees imposed on or after July 1, 1989.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

S.B. 1486

CHAPTER 1008

AN ACT TO PROVIDE THAT THE PENDER COUNTY BOARD OF EDUCATION SHALL TAKE OFFICE ON THE FIRST DAY OF JULY FOLLOWING ITS ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Effective January 1, 1992, G.S. 115C-37(d) reads as rewritten:

"(d) **Members to Qualify.** -- Each county board of education shall hold a meeting in ~~December~~ July following the election. At that meeting, newly elected members of the board of education shall qualify by taking the oath of office prescribed in Article VI, Sec. 7 of the Constitution.

This subsection shall not have the effect of repealing any local or special acts relating to boards of education of any particular counties whose membership to said boards is chosen by a vote of the people."

Sec. 2. The terms of office of members of the Pender County Board of Education which began in 1988 and 1990 in accordance with Section 5 of Chapter 976, Session Laws of 1983, shall terminate at the meeting of the Board in July of 1992 and 1994, respectively, at which their successors are, under G.S. 115C-37(d), to take the oath of office.

Sec. 3. This act applies to Pender County only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

S.B. 113

CHAPTER 1009

AN ACT TO CLARIFY THE AUTHORITY OF COUNTIES AND CITIES TO ADOPT ORDINANCES REGULATING LOCAL SOLID WASTE MANAGEMENT, TO CLARIFY A LIMITATION ON THE AUTHORITY OF COUNTIES TO LEVY SOLID WASTE DISPOSAL FEES, AND TO CLARIFY THE DEFINITION OF MUNICIPAL SOLID WASTE AS IT APPLIES TO MUNICIPAL SOLID WASTE REDUCTION GOALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-136 reads as rewritten:

" § 153A-136. *Regulation of solid wastes.*

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

- (1) Regulate the activities of persons, firms, and corporations, both public and private.
- (2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or

disposing of solid wastes without a license. A fee may be charged for a license.

- (3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding seven years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.
- (4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.
- (5) Require the source separation of materials from solid waste prior to collection of the solid waste for disposal.
- (6) Require participation in a recycling program which has been approved by the board of commissioners.
- (5) (7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any regulations rules adopted by the Department of Human Resources, Commission for Health Services or the Department of Environment, Health, and Natural Resources."

Sec. 2. G.S. 160A-192 reads as rewritten:

" § 160A-192. *Regulation of trash and garbage.*

(a) ~~A city may by ordinance regulate the disposal of solid wastes within the city, and may require the owners or occupants of houses and other buildings to place solid waste in specified places or receptacles for the convenience of city collection and disposal, and may impose charges for such collection and disposal.~~ A city may by ordinance regulate the collection and disposal of solid waste within the city. An ordinance may:

- (1) Require the owners or occupants of houses and other buildings to place solid waste in specified places or receptacles for the convenience of city collection and disposal.
- (2) Impose charges for such collection and disposal.
- (3) Require the source separation of materials from solid waste prior to collection of the solid waste for disposal.
- (4) Require participation in a recycling program which has been approved by the governing board.
- (5) Include any other proper matter.

(b) Any two or more cities, counties, sanitary districts, or any combination thereof, are authorized to enter into contracts and

agreements for the joint ownership, construction, operation and maintenance of solid waste collection and disposal systems and facilities. In operating such systems and facilities, the participating units may exercise jointly any power that they might exercise individually with respect to solid waste collection and disposal systems and facilities."

Sec. 3. G.S. 153A-292 reads as rewritten:

" § 153A-292. *County collection and disposal; tax levy.*

(a) The board of county commissioners of any county is hereby empowered to establish and operate garbage, refuse, and solid waste collection and disposal facilities, or either, in areas outside of incorporated cities and towns where, in its opinion, the need for such facilities exists. The board may by ordinance regulate the use of such garbage, refuse, and solid waste disposal facilities; the nature of the solid wastes disposed of therein; and the method of disposal. Ordinances so adopted may be enforced by any law-enforcement officer having jurisdiction, which shall include, but not be limited to, officers of the county sheriff's department, county police department and the State Highway Patrol. The board may contract with any municipality, individual, or privately owned corporation to collect and dispose, or collect or dispose, of garbage, refuse, and solid waste in any such area. ~~area provided no county shall be authorized by this Article to levy a disposal fee upon any municipality located in that county if the board of commissioners levy a countywide tax on property which provides in part for financing such disposal facilities.~~ No county shall levy a fee for the disposal of solid waste upon any municipality located in that county or upon any contractor or resident of any such municipality unless such disposal fee is based on a schedule which applies uniformly throughout the county. In the disposal of garbage, refuse, and solid waste, the board may use any vacant land owned by the county, or it may acquire suitable sites for such purpose. The board may make appropriations to carry out the activities herein authorized. The board may impose fees for the use of disposal facilities, and in the event it shall provide for the collection of garbage, refuse, and solid waste, it may charge fees for such collection service sufficient in its opinion to defray the expense of collection. Counties and municipalities therein are authorized to establish and operate joint collection and disposal facilities, or either of these, upon such terms as the governing bodies may determine. Such agreement shall be in writing and executed by the governing body of the participating units of local government.

(b) The board of commissioners of each county is hereby authorized to levy taxes for the special purpose of carrying out the authority conferred by this section, in addition to the rate of tax allowed by the

Constitution for general purposes, and the General Assembly hereby gives its special approval for such tax levies.

(c) The board of county commissioners may use any vacant land owned by the county, and it may acquire by purchase or condemnation suitable land for the disposal sites, and in the event condemnation of said lands is necessary, the procedure used shall be that set forth in Chapter 40A of the North Carolina General Statutes.

(d) The board may impose fees for the use of the disposal site, and if the county provides for collection services, it shall charge fees sufficient to defray the expense of collection.

(e) The board of commissioners of each county is authorized to levy taxes for the special purpose of carrying out the authority conferred by this section, in addition to the rate of tax allowed by the Constitution for general purposes, and the General Assembly hereby gives its special approval for such tax levies. The board of commissioners is authorized to make appropriations from these tax funds, and from nonrevenue funds which may be available. Provided that the county board of commissioners may authorize the erection of a gate across a ~~state or county maintained~~ State or county maintained highway leading directly to a sanitary landfill or garbage disposal site which is operated by the county. The gate may be erected at or in close proximity to the boundary of the landfill or garbage disposal site. The cost of the erection of the gate and its maintenance is to be borne by the county, and the gate shall be closed upon authority of the county commissioners."

Sec. 4. G.S. 130A-309.09(e) is rewritten to read:

"(e) As used in this section, 'municipal solid waste' includes any solid waste, except for sludge, resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash, but does not include solid waste from industrial, mining, mining or agricultural operations."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

S.B. 1499

CHAPTER 1010

AN ACT TO PROVIDE SENTENCING JUDGES WITH THE DISCRETION TO SUSPEND A SENTENCE TO A TERM OF IMPRISONMENT AND PLACE A YOUTHFUL OFFENDER ON PROBATION, WITH THE CONDITION THAT THE OFFENDER COMPLETE THE IMPACT PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. -- In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

- (1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (2) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on probation.
- (2a) Submit to a period of imprisonment in a facility for youthful offenders for a minimum of 90 days or a maximum of 120 days under special probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide by all rules and regulations as provided in conjunction with the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), which provides an atmosphere for learning personal confidence, personal responsibility, self-respect, and respect for attitudes and value systems.
- (3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).
- (4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.
- (5) Compensate the Department of Environment, Health, and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment, Health, and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).
- (6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

- (7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful.
- (8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.
- (8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.
- (9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.
- (10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

Sec. 2. The Department of Correction shall use residential programs with the goal of providing alternatives to long-term imprisonment of youthful first offenders, such as the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), for offenders placed on probation under Section 1 of this act.

Sec. 3. The criteria for selecting and sentencing youthful offenders to the Intensive Motivational Program of Alternative Correctional Treatment as provided under Section 1 of this act shall be as follows:

- (a) The offender must be between the ages of 16 and 25;
- (b) The offender must be convicted of an offense punishable by a prison sentence of one year or more;
- (c) The offender must submit to a medical evaluation by a physician approved by his probation or parole officer and

must be certified by the physician to be medically fit for program participation;

- (d) The offender must not previously have served an active sentence in excess of 120 days.

Sec. 4. This act shall become effective January 1, 1991.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

S.B. 1618

CHAPTER 1011

AN ACT TO MAKE RELEASING OF MOTOR VEHICLES UNLAWFUL.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding the following new section:

" § 20-106.2. Sublease and loan assumption arranging regulated.

(a) As used in this section:

- (1) 'Buyer' means a purchaser of a motor vehicle under the terms of a retail installment contract. 'Buyer' shall include any co-buyer on the retail installment contract.
- (2) 'Lease' means an agreement between a lessor and a lessee whereby the lessee obtains the possession and use of a motor vehicle for the period of time, for the purposes, and for the consideration set forth in the agreement whether or not the agreement includes an option to purchase the motor vehicle; provided, however, 'lease' shall not include a residential rental agreement of a manufactured home which is subject to Chapter 42 of the General Statutes.
- (3) 'Lessor' means any person who in the regular course of business or as a part of regular business activity leases motor vehicles under motor vehicle lease agreements, purchases motor vehicle lease agreements, or any sales finance company that purchases motor vehicle lease agreements.
- (4) 'Lessee' means a person who obtains possession and use of a motor vehicle through a motor vehicle lease agreement. 'Lessee' shall include any co-lessee listed on the motor vehicle lease agreement.
- (5) 'Person' means an individual, partnership, corporation, association or any other group however organized.
- (6) 'Security interest' means an interest in personal property that secures performance of an obligation.

- (7) 'Secured party' means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or retail installment sales contracts have been sold.
- (8) 'Sublease' means an agreement whether written or oral:
 - a. To transfer to a third party possession of a motor vehicle which is and will, while in that third party's possession, remain the subject of a security interest which secures performance of a retail installment contract or consumer loan; or
 - b. To transfer or assign to a third party any of the buyer's rights, interests, or obligations under the retail installment contract or consumer loan; or
 - c. To transfer to a third party possession of a motor vehicle which is and will, while in the third party's possession, remain the subject of a motor vehicle lease agreement; or
 - d. To transfer or assign to a third party any of the lessee's or buyer's rights, interests, or obligations under the motor vehicle lease agreement.
- (9) 'Sublease arranger' means a person who engages in the business of inducing by any means buyers and lessees to enter into subleases as sublessors and inducing third parties to enter into subleases as sublessees, however such contracts may be called. 'Sublease arranger' does not include the publisher, owner, agent or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium which disseminates any advertisement or promotion of any act governed by this section.
- (10) 'Third party' means a person other than the buyer or the lessee of the vehicle.
- (11) 'Transfer' means to transfer possession of a motor vehicle by means of a sale, loan assumption, lease, sublease, or lease assignment.
- (b) A sublease arranger commits an offense if the sublease arranger arranges a sublease of a motor vehicle and:
 - (1) Does not first obtain written authorization for the sublease from the vehicle's secured party or lessor; or
 - (2) Accepts a fee without having first obtained written authorization for the sublease from the vehicle's secured party or lessor; or
 - (3) Does not disclose the location of the vehicle on the request of the vehicle's buyer, lessee, secured party, or lessor; or

- (4) Does not provide to the third party new, accurate disclosures under the Consumer Credit Protection Act, 15 U.S.C. Section 1601, *et seq.*; or
- (5) Does not provide oral and written notice to the buyer or lessee that he will not be released from liability; or
- (6) Does not ensure that all rights under warranties and service contracts regarding the motor vehicle transfer to the third party, unless a pro rata rebate for any unexpired coverage is applied to reduce the third party's cost under the sublease; or
- (7) Does not take reasonable steps to ensure that the third party is financially able to assume the payment obligations of the buyer or lessee according to the terms of the lease agreement, retail installment contract, or consumer loan.

(c) It is not a defense to prosecution under subsection (b) of this section that the motor vehicle's buyer or lessee, secured party or lessor has violated a contract creating a security interest or lease in the motor vehicle, nor may any sublease arranger shift to the lessee, buyer or third party the arranger's duty under subdivision (b)(1) or (b)(2) to obtain prior written authorization for formation of a sublease.

(d) An offense under subdivision (b)(1) or (b)(2) of this section is a Class J felony.

(e) All other offenses under subsection (b) of this section are misdemeanors under G.S. 14-3(a). Each failure to disclose the location of the vehicle under subdivision (b)(3) shall constitute a separate offense.

(f) Any buyer, lessee, sublessee, secured party or lessor injured or damaged by reason of any act in violation of this section, whether or not there is a conviction for the violation, may file a civil action to recover damages based on the violation with the following available remedies:

- (1) Three times the amount of any actual damages or fifteen hundred dollars (\$1500.00), whichever is greater;
- (2) Equitable relief, including a temporary restraining order, a preliminary or permanent injunction, or restitution of money or property;
- (3) Reasonable attorney fees and costs; and
- (4) Any other relief which the court deems just.

The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

(g) This section and G.S. 14-114 and G.S. 14-115 are mutually exclusive and prosecution under those sections shall not preclude criminal prosecution or civil action under this section."

Sec. 2. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

S.B. 1620

CHAPTER 1012

AN ACT TO PROVIDE THE RULES AND PROCEDURE FOR
MUNICIPAL REDISTRICTING IN 1991.

The General Assembly of North Carolina enacts:

Section 1. (a) The General Assembly finds that:

- (1) Largely because of the 1982 amendments to the Voting Rights Act of 1965, the number of cities electing governing boards by districts has increased to more than 50;
- (2) The federal constitution and G.S. 160A-23 require that units of government electing on the district basis have district boundaries that follow the one-person-one-vote rule;
- (3) The Voting Rights Act of 1965 requires that minorities have the opportunity to elect candidates of their choice;
- (4) Census data will not be released until April 1, 1991, and may not be in usable form for redistricting purposes by local governments until several weeks after that;
- (5) Many cities are subject to Section 5 of the Voting Rights Act of 1965, requiring federal approval of any changes in district boundaries before filing can even open, a process which can take 60 or more days;
- (6) Filing is currently scheduled to open for municipal elections on July 5, 1991;
- (7) A consent judgement in a federal lawsuit between the City of New York and the Census Bureau may result in adjusted census data being released on July 15, 1991, after filing has already opened, presenting possible chaos;
- (8) Trying to deal with all of this on an ad hoc, city-by-city basis may result in needless legal expenses, confusion, chaos, and delays;
- (9) A uniform system of anticipating these problems needs to be adopted in 1990, which will allow a structured approach by the cities involved, allowing an organized election system while protecting the rights of minorities to be involved in the redistricting process and minimizing litigation;
- (10) Changes need to be made now to allow possible adjustment of census data on July 15, 1991, not to occur while filing is already open for municipal offices in cities with a district system; and

- (11) If cities are unable to complete redistricting in 1991 in a timely fashion, it will be far better to put off the elections by six months or a year (depending on the type of electoral system) than to have court-ordered delays or a chaotic election year for candidates and election officials, except that if changes have been adopted but approval under the Voting Rights Act of 1965 is still pending on the date filing is to open, the 1991 election should be held under prior district boundaries so as to minimize disruption.

(b) The 1991 Session of the General Assembly may make further changes in the election timetable as more details about the possible July 1991 adjustment of census data become available.

(c) In order to devise a plan that conforms to the Voting Rights Act of 1965, changes in the number of district seats may need to be made, but the current procedural requirements in the general law for making such changes are too restrictive to allow meaningful use in 1991 without the changes made by this act.

Sec. 2. Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-23.1. Special rules for redistricting after 1990 census.

(a) As soon as possible after receipt of federal census information in 1991 the council of any city which elects the members of its governing board on a district basis, or where candidates for such office must reside in a district in order to run, shall evaluate the existing district boundaries to determine whether it would be lawful to hold the next election without revising districts to correct population imbalances. If such revision is necessary, the council shall consider whether it will be possible to adopt the changes (and obtain approval from the United States Department of Justice, if necessary) before the third day before opening of the filing period for the municipal election. The council shall take into consideration the time that will be required to afford ample opportunities for public input. If the council determines that it most likely will not be possible to adopt the changes (and obtain federal approval, if necessary) before the third business day before opening of the filing period, and determines further that the population imbalances are so significant that it would not be lawful to hold the next election using the current electoral districts, it may adopt a resolution delaying the election so that it will be held on the timetable provided by subsection (d) of this section. Before adopting such a resolution, the council shall hold a public hearing on it. The notice of public hearing shall summarize the proposed resolution and shall be published at least once in a newspaper of general circulation, not less than seven days before the date fixed for the hearing. Notwithstanding adoption of such a

resolution, if the council proceeds to adopt the changes, (and federal approval is obtained, if necessary) by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule under the revised electoral districts. Any resolution adopted under this subsection, and any changes in electoral district boundaries made under this section shall be submitted to the United States Department of Justice (if the city is covered under Section 5 of the Voting Rights Act of 1965), the State Board of Elections, and to the board conducting the elections for that city.

(b) In adopting any revisal under this section, if the council determines that in order for the plan to conform to the Voting Rights Act of 1965, the number of district seats needs to be increased or decreased, it may do so by following the procedures set forth in Part 4 of Article 5 of Chapter 160A of the General Statutes, except that the ordinance under G.S. 160A-102 may be adopted at the same meeting as the public hearing, and any referendum on the change under G.S. 160A-103 shall not apply to the municipal election in 1991 or 1992.

(c) If the resolution provided for in subsection (a) of this section is not adopted and:

(1) Proposed changes to the electoral districts are not adopted, or

(2) Such changes are adopted, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule using the current electoral districts.

(d) If the council adopts the resolution provided for in subsection (a) of this section and:

(1) Does not adopt the changes, or

(2) Does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified. For cities using the:

(1) Partisan primary and election method under G.S. 163-291, the primary shall be held on the primary election date for county officers in 1992, the second primary, if necessary, shall be held on the second primary election date for county officers in 1992, and the general election shall be held on the general election date for county officers in 1992;

- (2) Nonpartisan primary and election method under G.S. 163-294, the primary shall be held on the primary election date for county officers in 1992 and the election shall be held on the date for the second primary for county officers in 1992;
- (3) Nonpartisan plurality election method under G.S. 163-292, the election shall be held on the primary election date for county officers in 1992;
- (4) Election and runoff method under G.S. 163-293, the election shall be held on the primary election date for county officers in 1992 and the runoffs, if necessary, shall be held on the date for the second primary for county officers in 1992.

The organizational meeting of the new council may be held at any time after the results of the election have been officially determined and published, but not later than the time and date of the first regular meeting of the council in July 1992, except in the case of partisan municipal elections, when the organizational meeting shall be held not later than the time and date of the first regular meeting of the council in December of 1992."

Sec. 3. G.S. 163-291(2) reads as rewritten:

"(2) A candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the election, except:

- a. In 1991 a candidate seeking party nomination for municipal or district office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and
- b. In 1992 if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy

may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first."

Sec. 4. G.S. 163-294.2(c) reads as rewritten:

"(c) Candidates seeking municipal office shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the election, except:

- (1) In 1991 candidates seeking municipal office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and
- (2) In 1992 if the election is held then under G.S. 160A-23.1, candidates seeking municipal office shall file their notices of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

Notices of candidacy which are mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

H.B. 1205

CHAPTER 1013

AN ACT TO REQUIRE THE STATE BOARD OF COSMETIC ART EXAMINERS TO ISSUE A TEMPORARY EMPLOYMENT PERMIT TO PERSONS WHO HAVE APPLIED AND ARE QUALIFIED TO TAKE THE EXAMINATION FOR APPRENTICE COSMETOLOGIST OR REGISTERED COSMETOLOGIST.

The General Assembly of North Carolina enacts:

Section 1. Chapter 88 of the General Statutes is amended by adding a new section to read:

"§ 88-12.1. Temporary employment permit for applicants for examination.

(a) Any person who has completed the classroom hour requirements under this Chapter for registration as a cosmetologist or an apprentice cosmetologist, has applied and is qualified to take the State Board

examination for registration as a cosmetologist or an apprentice cosmetologist, and has otherwise complied with this section may apply to the Board of Cosmetic Art Examiners for a temporary permit to be employed and engage in the practice of cosmetology under the direct supervision of a registered cosmetologist.

(b) Temporary employment permits shall be issued by the Board provided that the following conditions are satisfied:

- (1) Within six months of having met the classroom hour requirements for registration under this Chapter, the applicant for a temporary employment permit has applied and is qualified to take the Board's examination for registration as an apprentice cosmetologist or registered cosmetologist.
- (2) Except as otherwise provided in subparagraph (3) of this section, a permit issued to the qualifying individual for the first time shall be valid for not more than six months from the date that the permit applicant has met the classroom hour requirements for registration as a cosmetologist or apprentice cosmetologist.
- (3) If the holder of a temporary employment permit does not pass the examination that he took during the period that the permit was valid or within 30 days of permit expiration, and if at the time the examination results are published the permit has expired or will expire within 30 days of such publication, the permit holder may apply to the Board to have the temporary employment permit extended for a period not to exceed three months from the date of publication by the Board of the results of the examination taken and not passed by the individual, provided that the applicant for a permit extension has applied and is qualified to retake the examination within the same six-month period. A permit shall not be extended more than one time for the same individual.

(c) The Board shall issue a temporary employment permit or permit extension to any individual who applies and meets the requirements for the permit or extension, as appropriate, as provided in this section.

(d) The holder of a valid temporary employment permit issued by the Board may engage in the practice of cosmetic art as defined under G.S. 88-2, provided that such practice is under the direct supervision of a registered cosmetologist. Nothing in this section may be construed to allow the holder of a valid temporary employment permit to operate, manage, or maintain a cosmetic art shop, beauty parlor, or hairdressing establishment, regulated under the provisions of this Chapter.

(e) The Board shall adopt rules necessary to implement the provisions of this section."

Sec. 2. G.S. 88-26 reads as rewritten:

"§ 88-26. *Causes for revocation of certificates.*

The Board of Cosmetic Art Examiners may either refuse to issue or renew, or may suspend, or revoke any certificate of registration or temporary employment permit for any one, or combination of the following causes:

- (1) Conviction of a felony shown by certified copy of the record of the court of conviction.
- (2) Gross malpractice, or gross incompetency, which shall be determined by the Board of Cosmetic Art Examiners.
- (3) Continued practice by a person knowingly having an infectious, or contagious disease.
- (4) Advertising by means of knowingly false, or deceptive statements.
- (5) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs.
- (6) The conviction of any of the offenses described in G.S. 88-28, subdivisions (3), (3a), (4), (6) and (7)."

Sec. 3. G.S. 88-28 reads as rewritten:

"§ 88-28. *Acts made misdemeanors.*

Each of the following constitutes a misdemeanor punishable upon conviction by a fine of not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100.00), or up to 30 days in jail, or both:

- (1) The violation of any of the provisions of G.S. 88-1.
- (2) Permitting any person in one's employ, supervision, or control to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.
- (3) Permitting any person in one's employ, supervision, or control, to practice as a cosmetologist unless that person has a certificate as a registered cosmetologist.
- (3a) Employing or permitting any person in one's employ, supervision, or control, to engage in the practice of cosmetic art under an invalid temporary employment permit.
- (4) Obtaining, or attempting to obtain, a certificate of registration for money other than the required fee or any other thing of value, or by fraudulent misrepresentations.
- (5) Practicing or attempting to practice by fraudulent misrepresentations.
- (6) The willful failure to display a certificate of registration as required by G.S. 88-24.

- (7) The willful violation of the reasonable rules and regulations adopted by the State Board of Cosmetic Art Examiners."

Sec. 4. This act is effective upon ratification. Section 2 of this act applies to actions taken by the State Board of Cosmetic Art Examiners on or after the date of ratification. Section 3 of this act applies to charges brought on or after the date of ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

H.B. 1223

CHAPTER 1014

AN ACT TO DELAY THE DEVELOPMENT OF NEW SANITARY LANDFILLS FOR THE DISPOSAL OF NONHAZARDOUS SOLID WASTE IN WATER SUPPLY WATERSHEDS FOR WHICH A PETITION FOR RECLASSIFICATION IS PENDING UNTIL THE CLASSIFICATION OF SUCH WATERSHEDS IS COMPLETED.

The General Assembly of North Carolina enacts:

Section 1. This section shall apply to any new sanitary landfill for the disposal of nonhazardous solid waste which is proposed to be located within the watershed of any of the surface waters of the State which are assigned water supply classifications (WS-I, WS-II, or WS-III) under rules adopted by the Environmental Management Commission and for which there is pending on 30 June 1990 a petition for reclassification of such waters to a more protective classification. The Department of Environment, Health, and Natural Resources shall not approve an application for a permit for any such new sanitary landfill until the Environmental Management Commission has adopted water supply watershed classifications and management requirements and has completed the classification of all existing water supply watersheds as required by Section 5 of Chapter 426 of the 1989 Session Laws. This section shall not apply to any application for a permit for a sanitary landfill which was filed prior to 1 July 1990.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

H.B. 1291

CHAPTER 1015

AN ACT CONCERNING ADMINISTRATION OF SMALL ESTATES BY THE CLERK OF SUPERIOR COURT AND A RELATED PROVISION OF THE INHERITANCE TAX LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-25-6 reads as rewritten:

" § 28A-25-6. *Payment to clerk of money owed ~~intestate~~ decedent.*

(a) As an alternate to the small estate settlement procedures of this Article, any person indebted to ~~an intestate~~ a decedent may satisfy such indebtedness by paying the amount of the debt to the clerk of the superior court of the county of the domicile of the ~~intestate~~ decedent:

- (1) If no administrator has been appointed, and
- (2) If the amount owed by such a person does not exceed five thousand dollars (\$5,000), and
- (3) If the sum tendered to the clerk would not make the aggregate sum which has come into the clerk's hands belonging to the ~~intestate~~ decedent exceed five thousand dollars (\$5,000).

(b) Such payments may not be made to the clerk if the total amount paid or tendered with respect to any one ~~intestate~~ decedent would exceed five thousand dollars (\$5,000), even though disbursements have been made so that the aggregate amount in the clerk's hands at any one time would not exceed five thousand dollars (\$5,000).

(c) If the sum tendered pursuant to this section would make the aggregate sum coming into the clerk's hands with respect to any one ~~intestate~~ decedent exceed five thousand dollars (\$5,000) the clerk shall appoint an administrator, or the sum may be administered under the preceding sections of this Article.

(d) If it appears to the clerk after making a preliminary survey that disbursements pursuant to this section would not exhaust funds received pursuant to this section, he may, in his discretion, appoint an administrator, or the funds may be administered under the preceding sections of this Article.

(e) The receipt from the clerk of the superior court of a payment purporting to be made pursuant to this section is a full release to the debtor for the payment so made.

(f) If no administrator has been appointed, the clerk of superior court shall disburse the money received under this section for the following purposes and in the following order:

- (1) To pay the surviving spouse's year's allowance and children's year's allowance assigned in accordance with law;
- (2) Repealed by Session Laws 1981, c. 383, s. 3.
- (3) Repealed by Session Laws 1981, c. 383, s. 3.
- (4) All other claims shall be disbursed according to the order set out in G.S. 28A-19-6.

Notwithstanding the foregoing provisions of this subsection, the clerk shall pay, out of funds provided the deceased pursuant to G.S. 111-18 and Part 3 of Article 2 of Chapter 108A of the General

Statutes of North Carolina, any lawful claims for domiciliary care received by the deceased, incurred not more than 90 days prior to his death. After the death of a spouse who died intestate and after the disbursements have been made in accordance with this subsection, the balance in the clerk's hands belonging to the estate of the ~~intestate decedent~~ shall be paid to the surviving spouse, and if there is no surviving spouse, the clerk shall pay it to the heirs ~~or distributees~~ in proportion to their respective interests.

(g) The clerk shall not be required to publish notice to creditors.

(h) Whenever an administrator is appointed after the clerk of superior court has received any money pursuant to this section, the clerk shall pay to the administrator all funds which have not been disbursed. The clerk shall receive no commissions for payments made to the administrator, and the administrator shall receive no commissions for receiving such payments."

Sec. 2. G.S. 105-24 reads as rewritten:

"§ 105-24. *Access to safe deposits of decedents; withdrawal of bank deposits, etc., payable to either husband or wife or survivor.*

(a) No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest assessed under this Article on property transferred by the decedent; but the Secretary of Revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Securities whose declaration date is after the decedent's death, or interest that accrues after the decedent's death on money on deposit at a bank, savings and loan association, credit union, or other corporation, however, may be transferred or delivered without retaining a portion of the property for the payment of taxes or interest and without obtaining the written consent of the Secretary to the delivery or transfer. Provided: The clerk of superior court of the resident county of a decedent may authorize in writing ~~any bank, safe deposit company, trust company, or any other institution~~ one or more banks, safe deposit companies, trust companies or any other institutions to transfer to the properly qualified representative of the estate any funds on deposit in the name of the decedent or the

decedent and one or more persons when the ~~total amount of such deposit or deposits~~ aggregate amount of all such deposits in all such institutions is ~~three hundred dollars (\$300.00)~~ two thousand dollars (\$2,000) or less, and when such deposit or deposits compose the total cash assets of the estate. Such authorization shall have the same force and effect as when issued in writing by the Secretary of Revenue.

(b) Every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting lock boxes for the safekeeping of valuable papers and personal effects, or having in their possession or supervision in such lock boxes such valuable papers or personal effects shall, upon the death of any person using or having access to such lock box, as a condition precedent to the opening of such lock box by the executor, administrator, personal representative lessee or cotenant of such deceased person, require the presence of the clerk of the superior court of the county in which such lock box is located. It shall be the duty of the clerk of the superior court, or his representative, in the presence of an officer or representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of such lock box and to furnish a copy of such inventory to the Secretary of Revenue, to the executor, administrator, personal representative, or cotenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person, or persons having possession of such lock box; provided, that for lock boxes to which decedent merely had access the inventory shall include only assets in which the decedent has or had an interest. Immediately after the clerk of superior court has made an inventory of the contents of the lock box, the safe deposit company, trust company, corporation, bank or other institution, or person shall, upon request, release to the lessee or cotenant of the lock box any life insurance policy stored in the lock box for delivery to the beneficiary named in the policy. Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the Secretary of Revenue a notice, in such form as the Secretary of Revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply.

Notwithstanding any of the provisions of this section, in any case where a bank deposit has been heretofore made or is hereafter made, or where savings and loan stock has heretofore been issued or is hereafter issued, in the names of two or more persons and payable to either or the survivor or survivors of them, such bank or savings and

loan association may, upon the death of either of such persons, allow the person or persons entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and the balance thereof shall be retained by the bank or savings and loan association to cover any taxes that may thereafter be assessed under this Article. When it is ascertained that there is no liability of such deposit or stock for taxes under this Article, the Secretary of Revenue shall furnish the bank or savings and loan association his written consent for the payment of the retained percentage to the person or persons entitled thereto by law; and the Secretary of Revenue may furnish such written consent to the bank or savings and loan association upon the qualification of a personal representative of the deceased. If the person entitled to funds in an account is the surviving spouse and the account is a joint account of the surviving spouse and the decedent with right of survivorship, no tax waiver is required from the Secretary of Revenue to release the funds in the account.

Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this Article on property transferred by the decedent. In any action brought under this provision it shall be a sufficient defense that the delivery or transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without knowledge of circumstances sufficient to place the defendant on inquiry."

Sec. 3. This act shall become effective October 1, 1990, and shall apply to the funds of all decedents dying on or after that date.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

H.B. 2081

CHAPTER 1016

AN ACT TO INCREASE THE MAXIMUM VEHICLE TAX THAT CAN BE LEVIED IN THE CITY OF GASTONIA FROM FIVE DOLLARS TO FIFTEEN DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-97(a) reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that

cities and towns other than the City of Durham may levy not more than ~~five dollars (\$5.00)~~ fifteen dollars (\$15.00) per year upon any vehicle resident therein, and except that the City of Durham may levy not more than one dollar (\$1.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars (\$15.00) per year upon each vehicle operated in such city or town as a taxicab."

Sec. 2. This act applies to the City of Gastonia only.

Sec. 3. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

H.B. 2190

CHAPTER 1017

AN ACT TO AUTHORIZE ANSON AND MONTGOMERY COUNTIES TO COLLECT CERTAIN FEES IN THE SAME MANNER AS AD VALOREM TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 591, Session Laws of 1989 reads as rewritten:

"Sec. 2. This act applies to Anson, Ashe, Montgomery, Robeson, and Wayne Counties only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

H.B. 2241

CHAPTER 1018

AN ACT REVISING AND CONSOLIDATING THE CHARTER OF BESSEMER CITY.

The General Assembly of North Carolina enacts:

Section 1. The Charter of Bessemer City is revised and consolidated to read:

"THE CHARTER
OF

BESSEMER CITY, NORTH CAROLINA.

"CHAPTER I. ORGANIZATION AND POWERS.

"ARTICLE A. INCORPORATION OF CITY;
CORPORATE POWERS.

"Section 1.10. *Incorporation of City and Corporate Powers.*

(a) The inhabitants of the City of Bessemer City, in the County of Gaston, State of North Carolina, shall continue to be and constitute a body politic incorporated within the boundaries as established in Article B of this Chapter, or as hereafter established in the manner provided by law, may have and use a corporate seal, and shall have perpetual succession and shall be a city under the name and style of 'Bessemer City.' Under such name the City shall continue to be vested with all of the property and rights of property which now belong to the corporation; may sue and be sued; may contract and be contracted with; may acquire and hold such property, real and personal, as may be devised, bequeathed, sold or in any manner conveyed or dedicated to, whether voluntarily or involuntarily, or otherwise acquired by it, and from time to time may hold or invest, sell, or dispose of the same; may have a common seal and alter and renew the same at will and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever.

(b) In addition to the foregoing, the City shall have, acting through its Council, among other things, power to make and provide for the execution of such ordinances for Bessemer City (hereinafter referred to as the 'City') as they may deem proper not inconsistent with the laws of the State of North Carolina, now or hereafter granted to municipalities under the general law of the State of North Carolina, and the City is specifically granted in addition to the foregoing, the following powers which are in addition to all other powers and authority set out in this Charter:

- (1) Eminent Domain. To condemn land required for any governmental purpose, both within and without the City limits, and in such excess as may be required to protect or preserve same, under the same procedure as now or hereafter provided in the General Statutes.
- (2) Exercise of Police Power. To adopt and enforce within its corporate limits and within one mile thereof police, sanitary, and other police power regulations not inconsistent with the General Statutes and all amendments thereto, including extraterritorial zoning authority as authorized by the General Statutes which are hereby declared to be applicable to the City, provided, however, that the boundaries of such corporate limits and the one-mile area be defined in terms of geographical features identifiable on the ground, to the extent feasible, as provided by general statute;
- (3) Borrow Money. To borrow money within the limits prescribed by law;

- (4) **Appropriate Money.** To appropriate the money of the City for all lawful purposes in accordance with the applicable provisions of the General Statutes.
- (5) **Payment of Debt.** To provide for the payment of existing legal indebtedness and of any binding obligation that may be made from time to time by the City and to appropriate funds and levy taxes for that purpose;
- (6) **Ordinances to Preserve Order.** To pass ordinances for the due observance of Sunday and for maintenance of order in the vicinity of churches, schools, and public buildings;
- (7) **Cemeteries.** To own, establish, regulate and operate one or more cemeteries and to regulate the burying of the dead;
- (8) **Ownership of Public Facilities.** To own, operate, maintain, or cease to maintain, parks, hospitals, auditoriums, swimming pools, community centers, playgrounds, stadiums, athletic parks and fields, and such other facilities for the benefit and welfare of its citizens and to finance same out of tax revenue or any portion of the General Fund; provided such appropriations do not exceed ten percent (10%) of the gross tax receipts during any fiscal year;
- (9) **Storm Drainage.** To require that all property owners provide adequate drainage facilities to the end that their premises be kept free of standing water and permit the natural flow of water thereon to be taken care of, and that in case of failure on the part of such owner or owners to provide the same, after due written notice, to go upon the premises and construct the necessary facilities and charge the costs thereof against said premises to be collected as in the case of taxes;
- (10) **Automobiles.** To control, regulate, or prohibit the licensing and operating of junk yards and auto wrecking companies in the City;
- (11) **Ordinance Enforcement.** To prescribe fines, forfeitures, and penalties for the breach of any ordinance enforcing the powers granted in this Charter or by general law and to provide for recovery of such fines and forfeitures and cost of enforcement of such penalties;
- (12) **Ordinances to Maintain Peace and Welfare.** To pass such ordinances as are expedient for maintaining peace, good government, and the welfare of the City and the morals and happiness of its citizens, and for the performance of all municipal functions;

- (13) General Duties and Powers. To do and perform all other duties and powers authorized by law; and those prescribed by general statute and those necessarily implied by law.

No liability shall accrue to the City or its officers, agencies, employees, or elected officials for the failure of said City or its officers, employees, agencies, or elected officials to perform any duty or exercise any powers above enumerated or hereafter set out in this Charter, the General Statutes, or the general laws of the State of North Carolina.

Except as otherwise provided in the Charter, or the general laws of North Carolina, the City Council shall have authority to determine by whom and in what manner the powers granted by this section shall be exercised.

"Section 1.12. *Exercise of Power.* All powers, functions, rights, privileges, and immunities of the City, its officers, agencies, employees, or elected officials shall be carried into execution as provided by this Charter or, if this Charter makes no provision, as provided by ordinance or resolution of the City Council, and as provided by the general laws of North Carolina pertaining to municipalities, and their officers, agencies, employees, and elected officials.

"Section 1.14. *Powers Granted by Charter not Exclusive.* The enumeration of particular powers, rights, privileges, franchises, and immunities by this Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated or implied therein, or as appropriate to the exercise thereof, the City shall have and may exercise all other powers which under the Constitution and laws of North Carolina are now granted or may be granted in the future to municipalities. The powers herein granted are in addition to and not in substitution of existing powers, or powers hereafter granted to municipal corporations under the Constitution and laws of North Carolina. Except as limited or restricted or prohibited by the Constitution of North Carolina or this Charter, the City shall have and may exercise all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever.

"ARTICLE B. MUNICIPAL CORPORATE BOUNDARIES.

"Section 1.16. *Corporate Limits Defined.* The corporate limits of the City shall be those existing at the time of ratification of this restated Charter with such alterations as may be made from time to time in the manner provided by law.

"Section 1.18. *City Map.* The city engineer or such other appropriate and qualified person shall prepare a map of such boundaries to be entitled 'Map of Bessemer City Limits' and shall also prepare a written description of the corporate boundaries as shown on

said map to be designated 'Description of Bessemer City Limits.' The city manager, if any, or Mayor shall at all times maintain said map and description in his office as the official map and description of the corporate boundaries of the City and shall be open to inspection by any person at any time during normal business hours; provided, however, that the City shall have authority to extend its corporate limits in any fashion as provided for by the general laws of North Carolina. The city engineer or such other appropriate person shall indicate any alteration by making appropriate changes in or additions to said map and description. Photographic, typed or other copies of said official map or description, certified by the city clerk, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. When required from time to time, the City Council may provide for the redrawing of the official map or the rewriting of the official description. A redrawn map and a rewritten description shall supersede the earlier map and description which are replaced.

"ARTICLE C. CHARTER AMENDMENTS.

"Section 1.20. *City Attorney to Recommend Changes.* As soon as possible after the adjournment of each General Assembly, the city attorney shall present to the City Council copies of all local laws relating to the property, affairs, and government of the City that were enacted by such General Assembly, whether or not in terms amending this Charter, which he recommends to be incorporated into this Charter. Such recommendations may include suggestions for renumbering or rearranging the provisions of such laws, for providing titles and catch lines, and for such other changes in arrangement and form that do not change the law as may be thought necessary to implement the purposes of this section. After considering the recommendations of the city attorney, the City Council may provide for the incorporation of such laws into this Charter in order to maintain at all times a current and accurate Charter.

"CHAPTER II. MAYOR AND COUNCIL.

"ARTICLE A. COUNCIL: COMPOSITION, TERMS, QUALIFICATIONS, AND COMPENSATION.

"Section 2.10. *Composition of the City Council.* The membership of the City Council shall consist of a Mayor and six Council members who shall be elected in the manner provided in this Charter.

"Section 2.12. *Terms, Qualifications, and Vacancies.*

(a) The terms of office for all elected officials (i.e., Mayor and Council members) shall be for two years, beginning the day and hour of the organizational meeting of the Council, and shall continue until their successors are elected and qualified.

(b) No person shall be eligible to be elected to the City Council or to serve thereon unless he is a qualified voter and resident of the City. Any qualified elector of the City who has been a resident of the ward from which he is elected for at least 30 days prior to election shall be eligible to serve as a council member for such ward.

(c) If any person elected as a council member shall refuse to be qualified, or for any reason cannot be qualified, or if there is a vacancy occurring after his election and qualification as a result of death, resignation, removal of the place of residence of a council member from Bessemer City or the ward for which such council member was elected, conviction of or submission to a felonious charge, a declaration of lunacy, or for any other cause as decreed by a court of competent jurisdiction, or by operation of law, or if any such person becomes unable to discharge the duties of the office of council member, the Council shall choose some qualified person who has been a resident of the ward in which the vacancy occurred for at least four months prior to the date of appointment to serve as council member in his place and stead for such unexpired term. Council members so selected shall have all authority and powers given by this Charter to regularly elected council members. Such council member shall be elected by a majority vote of the remaining members of the City Council in regular or special meeting. The City Council shall have authority to fill any vacancy resulting from a failure of candidates filing.

(d) If any person elected as Mayor shall refuse to be qualified, or for any reason cannot be qualified, or if there is a vacancy occurring after his election and qualification as a result of death, resignation, removal of residence from Bessemer City, conviction of or submission to a felonious charge, a declaration of lunacy, or for any other cause as decreed by a court of competent jurisdiction, or by operation of law, or if any such person becomes unable to discharge the duties of the office of Mayor, Council shall choose some qualified person residing in the City for such unexpired term to act as Mayor in his place and stead. A Mayor so selected shall have all authority and powers given by this Charter to a regularly elected Mayor. Such Mayor shall be elected by a majority vote of the remaining members of the City Council in regular or special meeting.

(e) No person elected to the City Council, whether he qualifies or not, shall, during the term for which he was elected, be appointed to or serve in any other position or office of trust or profit in the City government. However, when a vacancy exists or shall occur in the office of Mayor, a Council member shall not be barred from selection as Mayor for the unexpired term.

"Section 2.14. *Compensation and Reimbursement of Officials.* The City Council may fix the compensation of the Mayor and the Council members and any other elected officers of the City in such sums as may be just and reasonable. Any increase in the compensation of Mayor or Council member shall not take effect until after the next succeeding regular municipal election. The Mayor, Council members or other elected officers shall be entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other City officers and employees.

"Section 2.16. *Rules of Business.* The City Council shall determine its own rules and order of business.

"ARTICLE B. ORGANIZATION AND PROCEDURES.

"Section 2.20. *Organizational Meeting.* On the first regular meeting date in December following the election in the immediately preceding November, the newly elected Mayor and Council members shall meet at its usual place for holding its meetings in Bessemer City, and the newly elected Mayor and Council members shall take their oath of office and assume the duties of their office. The council members shall choose from its members a Mayor Pro Tem, who shall hold office for a term of two years. The organization of the Council shall take place notwithstanding the absence, death, refusal to serve or nonelection of one or more members; provided, that at least four of the persons entitled to be members are present.

"Section 2.22. *Regular and Special Meetings.*

(a) *Regular Meetings.* Following the organizational meeting, the Council shall designate the time for its regular meetings by resolution or ordinance and shall convene for such regular meeting not less than once each month.

(b) *Special Meetings.* The Mayor, or in the absence of the Mayor, the Mayor Pro Tem, or a majority of the Council members at any time may call a special meeting of the City Council by causing written notice stating the time, place and purpose of the special meeting, to be delivered to each member or left at his dwelling and also at his place of business at least six hours before such special meeting. Only the business stated in the written notice may be transacted at a special meeting so called, except when the Mayor and all Council members are present and consent to the transaction of other business. Meetings of the Council may also be held at any time the Mayor and all Council members are present and consent thereto or when called or announced at a regularly scheduled meeting of the Council at which time all members of the Council are present.

(c) *Attendance and Quorum.* The Mayor and City Council members shall be expected to attend all Council meetings, both

regular and special, and shall endeavor to attend at least seventy-five percent (75%) of such meetings. A majority of the City Council shall constitute a quorum. In determining whether a quorum is present, the Mayor shall be counted as a member of the City Council.

(d) All Meetings Public. Unless otherwise provided by law, all meetings shall be open to the public, and the Council shall sit with open doors at all of its legislative sessions.

(e) Minutes of Meeting to Be Kept. The City Council shall keep a journal of its proceedings which, except as to those matters exempted by law, shall be a public record. All minutes shall be maintained by the city clerk.

(f) Mayor to Preside. The Mayor, who shall be the official head of the City, shall preside at all meetings of the Council, if present. In the absence of the Mayor, the Mayor Pro Tem shall preside, and in the absence of both, a chairman pro tem shall be chosen to preside at such meeting.

(g) Voting.

- (1) Mayor and council Obligated to Vote. Neither the Mayor nor any Council member shall be excused from voting except upon matters involving the consideration of his own official conduct, or involving matters in which he has a financial or prejudicial interest. An unexcused failure to vote by the Mayor or a Council member who is present shall be deemed an affirmative vote and shall be so recorded. A Council member who has withdrawn from a meeting without being excused shall be counted as present for the purpose of determining whether or not a quorum is present, and if a vote is taken during the absence of a Council member, his vote shall be deemed an affirmative vote as set forth above.
- (2) Mayor and Mayor Pro Tem. The Mayor shall have no vote except in the case of a tie. In the absence of the Mayor, the Mayor Pro Tem, or the Chairman Pro Tem shall vote as herein provided for the Mayor.
- (3) Quorum. A majority of the members present shall be sufficient to pass any motion, resolution, or ordinance unless a greater vote is required by law or is set out herein.
- (4) Public Hearings. The Council may continue any public hearing without further advertisement. If a quorum is not present at the time fixed for such hearing, it shall automatically be continued to the next regular Council meeting.

"ARTICLE C. POWERS AND DUTIES.**"Section 2.30. *Exercise of Powers.***

(a) City Council. The City Council shall direct the exercise of all of the powers of the City, except as otherwise provided by this Charter. In addition to other powers conferred upon it by law, the City Council may adopt and provide for the execution of such ordinances, rules and regulations as may be necessary or appropriate for the preservation of the comfort, convenience, security, good order, better government or general welfare of the City and its inhabitants. The Council may enforce the same by imposing penalties for violations and may compel the performance of the duties imposed upon others by suitable penalties.

(b) Mayor. The Mayor shall be the official representative of the City and shall preside at all meetings of the City Council. The powers and duties of the Mayor shall be such as are conferred upon him by this Charter, by the General Statutes, and by general law, together with such others as may be conferred by the Council.

(c) Mayor Pro Tem. During the absence or disability of the Mayor, the functions of his office shall be maintained by the Mayor Pro Tem. The Mayor Pro Tem shall preside at all meetings of the Council in the absence of the Mayor, but shall only vote when so presiding as herein provided for the Mayor.

(d) Council to be Judge of Elections. The City Council shall be the judge of the elections and qualifications of its members and the Mayor, and in such cases shall have power to subpoena witnesses and compel the production of all pertinent books, records, and papers; but the decision of the City Council in any case shall be subject to review by a Court of competent jurisdiction.

"ARTICLE D. ORDINANCE PROCEDURES.

"Section 2.40. *Applicable General Law.* Except as otherwise herein provided, the adoption, amendment and repeal of ordinances shall be governed by provisions of general laws applying to municipalities.

"Section 2.42. *Effect of Ordinances on City Property.* Unless otherwise provided in the ordinance, all ordinances shall apply to property and rights-of-way belonging to the City and located outside the corporate limits.

"Section 2.44. *Code of Ordinances.* The Council shall adopt and issue a copy of its ordinances known as the 'Code of Ordinances of Bessemer City.' The code may be reproduced by printing, mimeographing, photoduplication, offset or similar process and may be issued as a securely bound book or books with periodic separately bound supplements or as a loose leaf book maintained by replacing pages.

"CHAPTER III. ADMINISTRATIVE OFFICES.

"ARTICLE A. ORGANIZATION OF CITY GOVERNMENT.

"Section 3.10. *Organization.* The Council may create, change, abolish and consolidate offices, positions, departments, boards, commissions, and agencies of the City government and generally organize and reorganize the City government in order to promote orderly and efficient administration of City affairs, except as may be otherwise provided by this Charter and by the applicable general laws of the State of North Carolina.

"ARTICLE B. CITY MANAGER.

"Section 3.20. *Appointment.* The City Council shall appoint a city manager to serve at its pleasure. He shall be appointed solely on the basis of his executive and administrative qualifications, and the city manager need not be a resident of the City at the time of his appointment but shall be required to become a resident of the city within six months following his appointment. The individual appointed city manager is eligible to serve in more than one appointive capacity but not as an elected official. He shall receive such compensation as the Council may fix.

"Section 3.22. *Powers.* The city manager shall be the chief administrator of the City. He shall be responsible to the Council for administering all municipal affairs placed in his charge and shall have the powers and duties set out in the applicable provisions of the General Statutes. However, the city manager shall not have any authority to hire or fire the city clerk, city attorney, or the police chief.

"Section 3.24. *Interim City Manager.* When the position of city manager is vacant, the Council shall designate a qualified person to exercise the powers and perform the duties of manager until the vacancy is filled.

"Section 3.26. *Qualified Candidates.* Any duly qualified person shall be eligible for the position of city manager other than the Mayor or members of the City Council.

"ARTICLE C. PERSONNEL.

"Section 3.30. *Hiring, Compensation and Benefits.*

(a) *Pay and Allowances.* The Council shall approve the schedule of pay, expense allowance, and other compensation of all City employees and may adopt position classification plans. The Council may purchase life insurance and health insurance for the benefit of all or any class of City employees as a part of their compensation, and may provide other fringe benefits for City employees.

(b) *Ordinances and Regulations.* The Council may adopt or provide for rules and regulations or ordinances concerning but not limited to annual leave, sick leave with full pay or with partial pay

supplementing workers' compensation payments for employees injured in accidents arising out of and in the course of employment, hours of employment, holidays, working conditions, service award and incentive award programs, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent and honest career employees.

"Section 3.32. *Defense of Employees and Officers.* Upon request made by or in behalf of any employee or officer, or former employee or officer, the Council, in its discretion, may provide for the defense of any civil or criminal action or proceeding brought against such employee or officer either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or officer of the City. The defense may be provided by the City by its counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense.

"ARTICLE D. CITY CLERK.

"Section 3.42. *City Clerk.* The Council shall appoint a city clerk to serve at its pleasure. He shall give notice of meetings of the Council, keep a journal of the proceedings of the Council, be custodian of all City records entrusted to him, and shall perform any other duties that may be required by law, by the Council or by the city manager. In addition, the Council may appoint or provide for one or more deputy city clerks who shall have full authority to exercise and perform any of the powers and duties of the city clerk that it may specify.

"ARTICLE E. CITY ATTORNEY.

"Section 3.52. *City Attorney.* The Council may appoint a city attorney to serve at its pleasure, shall prescribe his duties and approve his rate of compensation. The Council may appoint or provide for one or more associates or assistant city attorneys who shall receive such compensation as may be fixed by the Council and shall have full authority to exercise and perform any of the powers and duties of the city attorney that may be specified by the Council or the city attorney.

"ARTICLE F. TAX COLLECTOR.

"Section 3.62. *Tax Collector.* The Council shall appoint a tax collector to collect taxes levied by the Council. The Council may in its discretion designate some official or employee of the City who has other duties to perform also the duties of tax collector. The Council shall fix the compensation of the tax collector and the tax collector shall serve at its pleasure. It shall be the duty of the tax collector to employ all lawful means to collect all taxes levied by the Council and to perform such other duties as are prescribed by law or as might be

directed by the Council. The Council at its discretion may appoint one or more deputy tax collectors to serve at its pleasure and to receive such compensation as fixed by the Council. Deputy tax collectors shall have the authority to do and perform under the direction of the tax collector any act which the tax collector himself might perform unless the scope of authority of the deputy tax collector is specifically limited by the Council or by law.

"ARTICLE G. POLICE CHIEF.

"Section 3.72. *Police Chief.* The City Council may appoint a police chief to serve at its pleasure, shall prescribe his duties, and fix his compensation.

"ARTICLE H. MISCELLANEOUS.

"Section 3.80. *Official Bonds.* The officers, employees, and elected officials of the City, both elective and appointive, shall execute such official bonds in such amounts and upon such terms and conditions as the Council may from time to time require. The City may purchase and pay the premium for such bonds if it elects to do so.

"Section 3.82. *Reimbursement of City Officials.* The City Council is hereby authorized and empowered to reimburse any city official for expenses incurred while upon official business.

"Section 3.84. *Appointive City Officers.* The Council may appoint one person to fill any two or more positions listed in this Article.

"ARTICLE I. FINANCE AND FISCAL MATTERS.

"Section 3.90. *General Authority to Levy and Collect Taxes.* To raise revenue for defraying expenses and incident to the proper government of the City, the Council may, except as otherwise provided by law, levy and collect: (1) a tax on real and personal property and on all other property subject to taxation; (2) a tax on all trades, occupations, professions, businesses and franchises carried on within the City; and (3) any other taxes authorized by general law, by local act of the General Assembly or by a vote of the citizens of the municipality as provided by law. The power to impose the tax shall include the power to impose reasonable penalties for failure to declare tax liability, if required, or to impose penalties or interest for failure to pay taxes lawfully due within the time prescribed by law or ordinance. The power to impose the tax shall also include the power to provide for its administration in the manner not inconsistent with the statute authorizing the tax.

"Section 3.92. *Fiscal Year; Adoption of Annual Budget.* The fiscal year of the City shall be from July 1 through June 30. During such fiscal year, the City shall operate under an annual balanced budget which shall be adopted and administered in accordance with Chapter 159, Article 3 of the General Statutes. The City shall be required to

adopt a financial budget by September 1 of each year for the next year.

"Section 3.94. *Inspection of Records.* All records and accounts in every office and department of the City shall be open for inspection by any citizen or representative of the press at all reasonable times and under reasonable regulations established by the City Council, except records or documents the exposure of which would tend to defeat the lawful purpose which they are intended to accomplish or otherwise made confidential by law.

"ARTICLE J. PROCUREMENT AND PROPERTY MANAGEMENT.

"Section 3.102. *Contracting, Purchasing, Bidding, and Property Management Procedures.* All contracts, except as otherwise provided for in this Charter, or by law, shall be authorized and approved by the Council and reduced to writing in order to be binding upon the City.

Before making any purchase of contract supplies, materials, equipment or contractual services, opportunity shall be given for competition, under such rules and regulations and with such exceptions as the City Council may prescribe by ordinance. Unless otherwise limited by ordinance, all expenses for supplies, materials, equipment or contractual services involving sums greater than the limits imposed by the General Statutes shall be made on a written contract, and such contract shall be awarded to the lowest responsible bidder after such public notice and competition as may be prescribed by ordinances and in accordance with applicable provisions of the General Statutes.

Before beginning any City improvement costing more than the maximum sum permitted by the General Statutes, an opportunity shall be given for competition, under such rules and regulations and with such exceptions as the City Council may prescribe by ordinance. Unless otherwise limited by ordinance, all city improvements costing more than the maximum limits imposed by the General Statutes shall be executed by written contract except where such improvement is authorized by the City Council to be executed directly by a city department in conformity with detailed plans, specifications, and estimates. All such contracts shall be awarded to the lowest responsible bidder after such public notice and competition as may be prescribed by ordinances and in accordance with G.S. 143-129 provided the City Council shall have the power to reject any or all bids and exercise its discretion in the selection of a bid.

"Section 3.104. *Sale and Disposition of Property.* The City by private sale, sale on sealed bids, or public auction may in accordance with applicable provisions of the General Statutes upon such terms and conditions as it deems wise exchange, enter into agreements regarding

the joint use of, lease or sale of any interest in real or personal property which it may legally own.

"Section 3.106. *Easements.* The City shall have authority without complying with the provisions of this Article to grant easements over, through, under, or across any city property or the right-of-way of any public street or alley that is not a part of the State highway system. Easements in a street or alley right-of-way shall not be granted if the easement would substantially impair or hinder the use of the street or alley as a way of passage.

"Section 3.108. *Conflict of Interest.* Any officer, department head, employee, or member of the Council who has financial interest, direct or indirect, in any proposed contract with the City or in any proposed sale of any land, materials, supplies, or services to the City or to a contractor supplying the City shall make known that interest and shall refrain from voting upon or otherwise participating in the making of such contract or sale. Any officer, department head, employee, or member of the Council who willfully violates the requirements of this section shall be guilty of malfeasance in office or position. A violation of this section with the knowledge expressed or implied of the person or corporation contracting with or making a sale to the City shall render the contract void.

"ARTICLE K. AUDITS.

"Section 3.120. *Audits.* The City Council shall order an independent audit made of all accounts of the city government by a certified public accountant selected by the City Council and said accountant shall have no personal interest directly or indirectly in the financial affairs of the city government or its officers. This audit shall be made annually at the end of the fiscal year. The City Council shall have the authority to order an independent audit at any other time they should so desire. The annual audit herein provided for shall be made available for public inspection at the office of the City Clerk.

"CHAPTER IV. REGULATORY AND PLANNING FUNCTIONS.

"ARTICLE A. ADMINISTRATION OF JUSTICE.

"Section 4.10. *Administration of Justice.* The Council may offer and pay rewards for the conviction of any person or persons alleged to have committed criminal offenses which, in the judgment of the Council, involve serious danger to the public peace or public safety. The Council shall fix the terms, conditions, and amounts of such rewards. The rewards shall be paid only by order of the Council from nontax revenues in the general fund of the City; and the Council shall, in its discretion, determine who shall be entitled to the collection of any reward. In addition, the Council may allocate funds from nontax revenues in the general fund of the City for payment of informant's fees concerning such criminal offenses.

"ARTICLE B. PLANNING, ZONING, BUILDING REGULATIONS,
AND RELATED MEASURES.

"Section 4.20. *Authority.*

(a) Authority Granted.

For the purpose of promoting the orderly growth, expansion, and development of the City and the surrounding one mile area, the Council is hereby authorized to exercise any planning, zoning, subdivision and building regulation powers (including plumbing, heating, cooling, or electrical regulation powers) now or hereafter conferred upon the City and vested in the Council by this Charter, the General Statutes, or any other law applicable to the City.

(b) City May Contract for Services.

The City Council may contract with another governmental unit, agency or department for the performance of the services authorized pursuant to this Article as allowed by statute.

(c) Enforcement.

In order to enforce properly the provisions of any planning, zoning, or subdivision ordinance or building regulation the Council shall require by ordinance that prior to the beginning of any construction, reconstruction or alteration of any building or structure or for plumbing, heating, cooling or electrical installations within said area a permit or permits be obtained therefor from the inspections superintendent of the City.

(d) Powers Granted Not Exclusive.

The powers herein granted to the City are intended to be supplementary to any powers now or hereafter conferred upon it.

"Section 4.22. *Public Hearings on Zoning Changes.* Before adopting or amending any zoning regulations, restrictions, or boundaries, the Council after first referring the matter to the Bessemer City Planning and Zoning commission (commonly referred to as the 'Planning Board') for its recommendation shall hold a public hearing in accordance with the applicable ordinance.

"ARTICLE C. UTILITY REGULATIONS.

"Section 4.30. *Operation of Water, Sewer, and Gas Systems and Other Utilities.*

(a) Authority Granted.

Subject to the General Statutes, Federal Law and Regulations, and applicable general law, the City Council may:

- (1) Provide for the construction or acquisition and operation of utilities and utility systems;
- (2) Acquire any real or personal property necessary or incidental thereto, including equipment, machinery, and all manner of rights or interests in or relating to land and water, and appurtenances thereto;

- (3) Establish rates of charge for utility services and the use of utility facilities;
- (4) Adopt rules and regulations concerning the management of utilities and utility systems, with regard to such matters as maintenance, operation and improvement thereof, or require the pretreatment of waste; and
- (5) Adopt rules and regulations concerning charges for utility services.

(b) Definition of the Term 'Utility'.

As used in this Charter, unless the context otherwise requires, the term 'utility' includes water supply, water distribution, sewerage, waste disposal, electric power, natural or manufactured gas, and public transportation.

"Section 4.32. *Connection by Abutting Property Owners.* The Council may require that within 30 days after a water main or sewer line is completed and made ready for use, the owner of every abutting lot whereon such utility is supplied for any human use shall cause the lot to be connected thereto.

"Section 4.34. *Utility Charges.* In the event any charge for utility service or for the use of utility facilities is not paid within 10 days after it becomes due, the same shall be delinquent and if authorized by the General Statutes become a lien upon such real property served or in connection with which the service or facility is used or upon all personal property situated upon such real property for both. The charge may at any time after becoming delinquent be collected either by suit or by the City tax collector.

"Section 4.36. *Deposits.* A deposit by an owner or tenant of the premises to be served by a utility service or the use of utility facilities may be levied as per adopted ordinances and regulations of the City and held by the City for the duration of the service without interest. If a utility charge is not paid in a timely manner, the same may be deducted from the deposit and utility service may be cut off and not be turned on again until the balance of the deposit is increased to the original amount. An owner or tenant of property being serviced should give notice that the property is going to be vacated, in order to receive a refund of the deposit amount remaining subject to offset for charges due. In the event the owner or tenant shall vacate the premises without notifying the City and having utility cut off, the owner or tenant shall be liable to the City for any utility charges which accrue after the owner or tenant vacated the premises and shall forfeit to the City any balance of such deposit remaining after the utility service charge due has been deducted.

"Section 4.38. *Water and Sewer Connection.* Before any person, firm, or corporation shall connect in any manner, except a sewer or

water lateral from the meter to the premises, any privately owned water or sewer line or lines with any water or sewer line or lines of the City, such person, firm or corporation shall, by proper instrument, in consideration of making such connection and the benefits to be derived therefrom, dedicate, give, grant, and convey such water or sewer line or lines to the City whether such connection and line or lines be within or without the City limits. No connection to any water or sewer line or lines or any other local public utility shall be made without the express approval of the City, nor shall such connection be effected except by the forces or employees of the City, for which a reasonable charge may be made. Should any person, firm, or corporation connect any privately owned water or sewer line or lines with any city water or sewer line or lines without first dedicating, giving, granting, and conveying same to the City, the act of connecting such water or sewer line or lines to the water or sewer line or lines for the City shall be conclusively deemed and held to be a dedication, gift, grant, and conveyance of such water or sewer line or lines to the City; provided, that the City may enter into contracts, with any person, firm or corporation whereby sewer or water lines may be laid within or without the City limits and connected to the systems of the City under such terms as may be agreed upon, notwithstanding any provisions of this section.

"Section 4.40. *Natural Gas.* The City shall be authorized to purchase such quantities of natural or manufactured gas as necessary to effectively service the utility needs of the City and its inhabitants and obtain the most reasonable price from the provider. Such purchases by the City may be made through informal filing and bidding procedures and do not require the approval of the City Council if in excess of \$10,000.

"Section 4.42. *Public Utility Franchises.* The Council may grant franchises for any public utility or cablevision company in the manner provided by law, and, in its discretion, may hold a referendum at the expenses of the applicant on the question of granting a franchise.

"ARTICLE D. VEHICLES AND TRAFFIC.

"Section 4.50. *Council to Adopt Regulations.*

(a) Authority to Adopt Traffic Ordinances.

The Council may adopt ordinances regulating the speeds of vehicles upon any City streets and may establish truck routes (or other required routes for limited classes of vehicles or traffic) applicable to any City street. As used in this section, the term 'City streets' includes all public highways, roads and streets within the City limits, including numbered State highways, and highways, roads and streets maintained, repaired, constructed, reconstructed or widened in whole or in part with State funds.

(b) State Numbered Highways.

An ordinance concerning vehicle speeds, truck routes, or other required routes that applies to numbered State highways shall be subject to approval by the North Carolina State Highway Commission.

"ARTICLE E. ROADS AND STREETS.

"Section 4.60. *General Authority.* The Council shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage as provided in the General Statutes.

"Section 4.62. *Power to Classify Streets and Establish Building Setback Lines.* The Council not only within the corporate limits of the City but also within the territory beyond the corporate limits as now or hereafter fixed for a distance of one mile in all directions may:

- (1) Classify all or a portion of any existing or proposed street according to its size, present and anticipated traffic load and other characteristics relevant to the achievement of the purposes of this Article; and
- (2) Establish by ordinance minimum distances that buildings constructed along each class or type of street shall be set back from the right-of-way line or the center line of the street. The Council may classify portions of any street in a manner different from other portions of the same street where the characteristics of the portions differ.

"Section 4.64. *Enforcement.* Any setback line ordinance may provide for enforcement through the issuance of building permits and may be coordinated with the enforcement of the building code, the zoning ordinance and the subdivision ordinance.

"ARTICLE F. IMPROVEMENTS AND SPECIAL ASSESSMENTS.

"Section 4.70. *Local Improvements.* The City has all the power and authority granted to municipalities by the general laws of the State with respect to local improvements, such as, but not limited to, grading, regrading, widening, paving and repaving of public streets and alleys; constructing, reconstructing and altering of sidewalks, curbs, gutters and storm drains in the public streets and alleys; and laying or relaying sanitary sewer and water lines. The authority granted by this Article is in addition to that granted by any other law and with respect to any particular local improvement, the City may exercise any one or more of the alternative powers available to it.

"Section 4.72. *Special Assessments.* In making special assessments, the City may employ the following procedures:

- (1) *Petition.* Upon receipt of a petition from one or more owners of abutting property which fifty percent (50%) or more of the total street frontage is in one ownership, the Council may order the making of any local improvement. The Council may assess the cost thereof against the

abutting property in the same manner and following the same procedures set out in the general laws of the State for making special assessments against property benefited by local improvements.

- (2) **Limited Assessment Permitted.** The Council may order the making of any local improvement and assess the cost thereof, except the City's portion, if any, against only a limited number of abutting properties if the owners of those properties submit a petition asking that the improvement be made and that the total amount to be assessed for the improvement be assessed only against their properties.
- (3) **Assessment by Council without Petition.** If, in the Council's judgment, which shall be conclusive, the abutting property to be assessed will be benefited in an amount at least equal to the assessment, no petition for local improvements shall be necessary and the Council may order the making of any such local improvement and assess the cost thereof against abutting properties in the following cases:
 - a. **Streets.**
 1. When any street or part of a street is unsafe; or
 2. The improvement of a street or part of a street not more than 1,500 linear feet in length is necessary to connect a street already paved; or the improvement of a street or part of a street is necessary to connect a paved street, or portion thereof, with a paved highway; or the improvement of a street or part of a street is necessary to provide a paved approach to a railroad, street grade, separation, or bridge; or the widening of any street or part of a street is necessary to accommodate present and anticipated volumes of traffic;
 - b. **Storm Drains.** When any street or part of a street, or any property, is without storm sewer or other surface drainage improvements, and storm sewer or other surface drainage should be provided in the public interest;
 - c. **Sidewalks.** When any street or part of a street is without sidewalks and sidewalks should be provided in the public interest;
 - d. **Water and Sewer.** When any property is without water and sewer lines and water and sewer lines should be provided in the public interest.

- (4) **Repair of Sidewalks and Driveways.** If the Council determines that the public interest requires repair of a sidewalk or portion of a driveway within the public right-of-way, the Council may order the making of the repair and assess the total cost against the property abutting the sidewalk or driveway repaired. Before an assessment may be made for the repair, at least 30 days written notice shall be given to the abutting property owner personally or by registered or certified mail to his last known address or his address as shown on the tax records. The notice shall state that he is required to make the repair at his own expense in conformity with the sidewalk standards adopted by the City, and that if he shall fail to make the repair thereupon the City may make the repair and assess the cost. If the Council finds that any sidewalk or driveway is in need of immediate repair, the Council may adopt a resolution setting out its finding and directing that the repair be made immediately and that the cost be assessed against the abutting property without prior notice to the property owner affected.

"Section 4.74. *Planting Strip and Driveway Maintenance.* It is the responsibility of the abutting property owner to maintain any property, driveway, steps or walkway servicing the premises between the property line and the curb of a paved street including any property located between a sidewalk and the abutting street. The City Council may exercise any reasonable amount of enforcement necessary to maintain such areas at the expense of the property owner should it be necessary.

"ARTICLE G. ANNEXATION.

"Section 4.76. *Annexation.* The City Council shall have the authority to exercise all powers of annexation as provided in the General Statutes.

"CHAPTER V. ELECTIONS.

"Section 5.10. *Regular and Special Elections. Time.* For the purpose of electing a Mayor, the several Council members and all other elective officers of the City, there shall be held in the City, on the Tuesday following the first Monday in November, and biennially thereafter on the odd-numbered years beginning in 1973, a regular municipal election as provided in the General Statutes. The City Council may, by resolution and in accordance with the General Statutes and applicable law, order a special election, fix the time for holding the same, and provide all means for holding such special election, including rules and regulations governing registration of voters.

"Section 5.12. *Form of Voting.* The qualified voters of the City, voting at large, shall elect one council member from each of the six wards. Each voter in the City shall be entitled to vote for one candidate from each ward, and the candidate from each ward who receives the largest number of votes cast for council members from his ward shall be declared elected.

"Section 5.14. *Wards.* For the purpose of electing council members, the City shall be divided into six geographical subdivisions to be known as wards as established by ordinance duly adopted by the Council after hearing. The current wards are described as follows:

Ward 1: Beginning at the intersection of Virginia Avenue and 12th Street and running westerly along said avenue to Skyland Avenue; thence continuing westerly a straight line to where the northerly line of the city limits is intersected by Highway No. 1403 commonly known as Ramseur Road; thence easterly along the northerly city limits line to Highway No. 1448; thence southerly along said Highway and 12th Street to the beginning.

Ward 2: Beginning at the intersection of Mickley Avenue and the southerly line of the city limits and running westerly along said city limits line to the southwesterly corner of the city limits line; thence easterly along the city limits line to where it is intersected by Highway 1403; thence easterly a straight line to the westerly end of Virginia Avenue in the Mountain Road; thence southerly along the Mountain Road to Mickley Avenue; thence southerly along Mickley Avenue to the beginning.

Ward 3: Beginning at the intersection of Virginia Avenue and 12th Street and running southerly along 12th Street to the southerly city limits line; thence westerly along the city limits line to Mickley Avenue; thence northerly along Mickley Avenue to the Mountain Road; thence northerly along the Mountain Road to the westerly end of Virginia Avenue; thence easterly along Virginia Avenue to the beginning.

Ward 4: Beginning at the intersection of Virginia Avenue and 12th Street and running easterly along Virginia Avenue to 8th Street; thence southerly along 8th Street to the southerly city limits line; thence westerly along the city limits line to 12th Street; thence northerly along 12th Street to the beginning.

Ward 5: Beginning where the southerly city limits line is intersected by 8th Street and running northerly along 8th Street to the northerly end of the street and continuing northerly a straight line to the northerly city limits line; thence easterly along the city limits line to the northeasterly corner of the city limits line; thence westerly along the southerly city limits line to the beginning.

Ward 6: Beginning at the intersection of 8th Street and Virginia Avenue and running westerly along Virginia Avenue to 12th Street; thence northerly along 12th Street and highway No. 1448 to the northerly city limits line; thence along the old and new city limits line to a point in the city limits line northeasterly from the northerly end of 8th Street; thence a straight line along 8th Street in a southerly direction to the beginning.

"Section 5.16. *Polling Places and Ballots.* The City Council shall establish one or more polling places for the City. There shall be one ballot prepared for each local election. The full names of all candidates for Mayor and all candidates for the City Council shall be printed on the official ballots in the alphabetical order of the surnames in rotation without party designation.

"Section 5.18. *Absentee Voting.* In any City election, including a primary or general election or referendum, conducted by the county board of elections, absentee voting shall be permitted. Absentee voting shall not be permitted in any City election which is not conducted by the county board of elections. The appropriate provisions of the General Statutes shall apply to absentee voting with the exception that the earliest date by which absentee ballots shall be available to voters is 30 days prior to the date of the municipal primary or election or as quickly following the filing deadline specified in the General Statutes as the county board of elections is able to secure the official ballots.

"Section 5.22. *Statutes Governing City Elections.* City elections shall be conducted as far as possible in all things and in all details, other than as provided in this Charter, in accordance with the general election laws pertaining to municipal elections and particularly in accord with the appropriate provisions of the North Carolina General Statutes. However, where the General Statutes herein referred to are in conflict with any provision in this Charter, then said provision of this Charter shall supersede the general laws of North Carolina.

"Section 5.26. *Contract Services.* The City Council shall have the authority to contract with any governmental unit, agency or department for performing the services described in this Chapter as permitted by the General Statutes.

"CHAPTER VI. MISCELLANEOUS.

"ARTICLE A. CLAIMS AGAINST THE CITY.

"Section 6.10. *Claims.* No formal legal action shall be instituted or maintained against the City upon any claim or demand whatsoever of any kind or character unless the claimant shall have first presented in writing his claim or demand to the Council or to the city manager and said Council or city manager shall have declined to pay or settle

the same as presented. Nothing contained herein shall be construed to interfere with the running of any statute of limitations.

"ARTICLE B. CLAIMS BY THE CITY.

"Section 6.12. *Claims.* The city manager is hereby authorized to execute releases of persons, firms, and corporations because of damages to personal property belonging to the City, when the full amount of damages to such property is ascertained and a statement thereof has been furnished to the city manager by the city attorney and the amount of such release does not exceed five thousand dollars (\$5,000).

"ARTICLE C. INSURANCE.

"Section 6.14. *Insurance.* The City may contract to insure itself and any of its officers, agents, employees and elected officials against liability for wrongful death or negligent or intentional damage to person or property, and against absolute liability for damage to person or property, caused by an act or omission of the City or any of its officers, agents, employees, or elected officials when acting within the scope of their authority or the course of their employment. The Council shall determine what liabilities and what officers, agents, employees, and elected officials shall be covered by any insurance purchased pursuant to this Article.

**"ARTICLE D. CONTINUANCE OF CONTRACTS IN EFFECT
PRIOR TO CHARTER.**

"Section 6.16. *Contracts.* All contracts entered into by the City, or for its benefit, prior to the effective date of the restated Charter shall continue in full force and effect. Public improvements for which legislative steps have been taken under laws or the Charter provision existing at the time of the effective date of this Charter may be carried to completion in accordance with the provision of such existing law and Charter provision.

**"ARTICLE E. CONTINUANCE OF ORDINANCES IN EFFECT
PRIOR TO CHARTER.**

"Section 6.18. *Ordinances.* All ordinances of the City not inconsistent with the provision of this restated Charter shall remain in full force and effect until altered, amended or repealed by the City Council.

**"ARTICLE F. CONTINUANCE AND RATIFICATION OF
ACTION TAKEN PRIOR TO CHARTER.**

"Section 6.20. *Prior Action.* All actions of the City, its various Council members both past and present, its Mayors both past and present, and its city managers both past and present, prior to the effective date of the restated Charter shall continue in full force and effect and are hereby validated, approved, ratified, and confirmed regardless of whether such actions were within or outside the scope of

the Charter or general law then in effect. Said validation and approval shall include but not be limited to any and all alley closings which were completed or contemplated prior to the effective date of this restated Charter.

**"ARTICLE G. REPEAL OF LAWS IN CONFLICT WITH
CHARTER.**

"Section 6.22. *Repeal.* All laws and clauses of laws in conflict with this Charter are hereby repealed and specifically any provision, Charter, or amendment thereto to the City in conflict are specifically repealed. The following acts are specifically repealed: Chapter 828, Session Laws of 1967, and Chapter 22, Session Laws of 1971. No such repeal shall affect any act done or any right accruing or accrued or established or any suit had or commenced in any case before the time when such appeal shall take effect; provided, that no law heretofore repealed shall be revived by the repeal or any act repealing such law; provided, that all persons who at the time that said repeal shall take effect shall hold any office under any of the acts hereby repealed shall continue to hold the same according to the tenure thereof, except those as to which a different provision shall have been made to this Charter.

"ARTICLE H. SEVERABILITY CLAUSE.

"Section 6.24. *Severability.* Should any provision of this Charter be declared invalid or unconstitutional by any court of competent jurisdiction, that declaration shall not affect the validity of any part, clause, phrase, section, subsection, or sentence of this Charter not specifically declared to be invalid or unconstitutional.

"ARTICLE I. APPLICABILITY OF CHARTER.

"Section 6.26. *Applicability.* This Charter shall apply only to the City of Bessemer City, Gaston County, North Carolina and the geographic territory described in Chapter I, Article B hereof and includes the one-mile territory immediately surrounding the corporate boundaries.

"ARTICLE J. STRUCTURE AND LANGUAGE.

"Section 6.28. *Headings.* The headings used in this Charter are provided for convenience only and should not be construed as binding on the terms of the provisions contained herein.

"Section 6.30. *Gender.* For purposes of this Charter, the terms 'he', 'him', and 'his' are intended in the generic sense and shall be deemed to include both the female and male gender.

"ARTICLE K. STATUTORY REFERENCES.

"Section 6.32. *References.* Reference to a section or other subdivision of the General Statutes of the State of North Carolina shall be deemed to refer to such section or subdivision as amended or to any other section or subdivision to which the same has been

transferred or by which the same has been superseded. Whenever any section of this Charter refers to or cites a section of the General Statutes and that section is later amended or superseded, the Charter provision shall be deemed amended or superseded, the Charter provision shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section. The reference 'G.S.' shall be construed to refer to the General Statutes of North Carolina. Whenever a Code provision contains the language 'as provided in G.S. _____', any further explanation of the cited General Statute is only a summary of its content and it is included for information purposes only, and any violation of the cited General Statute will be enforced as specifically provided therein."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

H.B. 2242

CHAPTER 1019

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY INTO
THE CORPORATE LIMITS OF THE TOWN OF LONG VIEW.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Long View are increased by including the following described territory:

All parcels of land, including adjacent street right-of-way, completely surrounded by the Town of Long View, and the following five parcels surrounded by three sides and described as Catawba County Tax Map Numbers 98H-7-7, 98H-8-5, 134H-2-84B, 134H-2-87, and 134H-2-87A.

Sec. 2. This act shall become effective July 31, 1990. Taxes for the initial year shall be prorated in accordance with G.S. 160A-58.10.

In the General Assembly read three times and ratified this the 26th day of July, 1990.

S.B. 300

CHAPTER 1020

AN ACT TO PERMIT EMERGENCY MEDICAL SERVICE
EMERGENCY SUPPORT VEHICLES TO HAVE RED LIGHTS
AND SIRENS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-125(b) reads as rewritten:

"(b) Every vehicle owned and operated by a police department or by the Department of Crime Control and Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine Fisheries and used exclusively for law enforcement purposes, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation, and every ambulance or emergency medical service emergency support vehicle used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, transplant coordinators, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by ~~inspectors in the employ of the North Carolina Utilities Commission~~ law enforcement officers of the North Carolina Division of Motor Vehicles shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization."

Sec. 2. G.S. 20-130.1(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section do not apply to the following:

- (1) A police car;
- (2) A highway patrol car;
- (3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes;
- (4) An ambulance;
- (5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation;
- (6) A fire-fighting vehicle;
- (7) A school bus;
- (8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary;
- (9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official call;
- (10) A vehicle operated by medical doctors or anesthetists in emergencies;
- (11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the vehicle;
- (11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the vehicle;
- (12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the vehicle; ~~and~~

- (13) Any lights that may be prescribed by the Interstate Commerce Commission; ~~and~~
- (14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for ~~transplantation, transplantation; and~~
- (15) A vehicle operated by an emergency medical service as an emergency support vehicle."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 499

CHAPTER 1021

AN ACT TO MAKE VARIOUS SUBSTANTIVE AND TECHNICAL AMENDMENTS TO THE INSURANCE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-15-140 reads as rewritten:

"§ 58-15-140. Duration of liability for assessment.

Every subscriber of a domestic reciprocal having contingent assessment liability shall be liable for and shall pay his share of any assessment computed in accordance with this Part, if, while the policy is in force or ~~within one year after its termination,~~ for such period after its termination as the Commissioner may establish by rule, the subscriber is notified (i) by the attorney of his intention to levy the assessment or (ii) that delinquency proceedings have been commenced against the reciprocal under the provisions of Article 30 of this Chapter, and the Commissioner or receiver intends to levy an assessment. In adopting such rules the Commissioner may take into account factors including the kinds of insurance issued by such reciprocals."

Sec. 2. G.S. 58-57-100(b) reads as rewritten:

"(b) Policy forms, rates, rating plans, and classifications for the insurance authorized by subsection (a) of this section single or dual interest nonfleet private passenger motor vehicle physical damage insurance shall be filed with the Commissioner in accordance with Articles 40 and 41 of this Chapter. Every insurer writing such insurance shall, on or before April 1 of each year, file a supplemental financial statement in such form and detail that the Commissioner prescribes that will enable the Commissioner to review and analyze the filings made under this subsection."

Sec. 3. G.S. 58-1-15(d) is repealed.

Sec. 4. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

" § 58-2-105. Confidentiality of medical records.

All privileged patient medical records in the possession of the Department shall be confidential and shall not be public records pursuant to G.S. 58-2-100 or G.S. 132-1."

Sec. 5. G.S. 143-151.13(c) reads as rewritten:

" § 143-151.13. Required standards and certificates for Code-enforcement officials.

(c) *(For effective date see note)* A Code-enforcement official holding office as of the date specified in this subsection for the county or municipality by which he is employed, shall not be required to possess a standard certificate as a condition of tenure or continued employment but shall be required to complete such in-service training as may be prescribed by the Board. At the earliest practicable date, such official shall receive from the Board a limited certificate qualifying him to engage in Code enforcement at the performance level and within the governmental jurisdiction in which he is employed. The limited certificate shall be valid only as an authorization for the official to continue in the position he held on the applicable date and shall become invalid if he does not complete in-service training within two years following the applicable date in the schedule below, according to the governmental jurisdiction's population as published in the 1970 U.S. Census:

Counties and Municipalities over 75,000 population -- July 1, 1979

Counties and Municipalities between 50,001 and 75,000 -- July 1, 1981

Counties and Municipalities between 25,001 and 50,000 -- July 1, 1983

Counties and Municipalities 25,000 and under -- July 1, 1985

All fire prevention inspectors holding office -- July 1, ~~1989~~, 1991.

An official holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position."

Sec. 6. G.S. 58-30-60(d) reads as rewritten:

"(d) Any insurer subject to an order under this section shall comply with the lawful requirements of the Commissioner and, if placed under supervision, shall ~~have 60 days from the date the supervision order is served within which to~~ comply with the requirements of the Commissioner within such period of time established by the Commissioner. The Commissioner may in his discretion extend the time for compliance beyond ~~60 days~~ such period of time for cause. In the event of such insurer's failure to comply

within such period of time, the Commissioner may institute proceedings under this Article to have a rehabilitator or liquidator appointed, or extend the period of supervision."

Sec. 7. G.S. 58-4-20 is recodified as G.S. 58-2-215.

Sec. 8. G.S. 58-33-35(6) reads as rewritten:

"(6) Applicants for license as agents for companies or associations specified in G.S. 58-36-50; provided that with respect to town or county farmers mutual fire insurance companies, this exemption applies only to those agents who solicit and sell only those kinds of insurance specified in G.S. 58-7-75(5)d for such companies."

Sec. 9. G.S. 58-33-125(d) reads as rewritten:

"(d) The requirement for an examination or a registration fee does not apply to agents for domestic farmers' mutual assessment fire insurance companies or associations specified in G.S. 105-228.4, who solicit and sell only those kinds of insurance specified in G.S. 58-7-75(5)d for such companies."

Sec. 10. G.S. 58-36-80 reads as rewritten:

"§ 58-36-80. *Coverage for damage to rental vehicles authorized.*

Every member of the Bureau is authorized to offer and provide as a supplemental extension of property damage liability coverage in nonfleet private passenger motor vehicle insurance policies, coverage for property damage to rented motor vehicles caused by persons insured under such policies. As used in this section, 'property damage' means damage or loss to a rented vehicle in excess of two hundred fifty dollars (\$250.00), including loss of use and any costs or expenses incident to the damage or loss, for which the renter is legally obligated to pay; and 'rented' means rented on a daily rate basis for a period of 21 consecutive days or less. The Bureau is authorized to promulgate rates and policy forms for insurance against property damage to rented private passenger motor vehicles. Such coverage may be offered at the option of the individual member companies of the Bureau."

Sec. 11. G.S. 20-11(b) reads as rewritten:

"(b) The Division may grant an application for a limited learner's permit of any minor under the age of 16, who otherwise meets the requirements of licensing under this section, when such application is signed by both the applicant and his or her parent or guardian or some other responsible adult with whom the applicant resides and is approved by the Division of Motor Vehicles. The limited learner's permit shall entitle the applicant, while having the permit in his immediate possession, to drive a motor vehicle of the specified type or class upon the highways while accompanied by a parent, guardian, or other person approved by the Division, who is licensed under this Chapter to operate a motor vehicle (of the type or class being operated

by the permittee) and who is actually occupying a seat beside the driver. The limited learner's permit shall be valid for a period of 18 months and the fee for issuance of a limited learner's permit shall be five dollars (\$5.00). Provided, however, a limited learner's permit as herein provided shall be issued only to those applicants who have reached the age of 15 years. In the event a minor who has been issued a limited learner's permit under this subsection operates a motor vehicle in violation of any provision herein, the permit shall be canceled.

Provided a driver who holds a learner's permit only shall not be deemed a ~~male operator under age 25 licensed driver~~ for the purpose of determining the ~~insurance premium rate for persons insured~~ ~~inexperienced operator premium surcharge under automobile property damage and bodily injury liability insurance policies.~~"

Sec. 12. Section 11 of this act shall become effective January 1, 1991.

Sec. 13. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 817

CHAPTER 1022

AN ACT TO PROVIDE THAT POSSESSION OF MATERIALS
CONTAINING A VISUAL REPRESENTATION OF A MINOR
ENGAGING IN SEXUAL ACTIVITY IS A FELONY.

The General Assembly of North Carolina enacts:

Section 1. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-190.17A. Third degree sexual exploitation of a minor.

(a) Offense - A person commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in sexual activity.

(b) Inference - In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations or otherwise represents or depicts as a minor is a minor.

(c) Mistake of Age - Mistake of age is not a defense to a prosecution under this section.

(d) Punishment and Sentencing - Violation of this section is a Class J felony."

Sec. 2. G.S. 14-190.13 reads as rewritten:

"§ 14-190.13. Definitions for certain offenses concerning minors.

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; and G.S. 14-190.19, participating in prostitution of a minor.

- (1) Harmful to Minors. That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:
 - a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and
 - b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and
 - c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.
- (2) Material. Pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words.
- (3) Minor. An individual who is less than 18 years old and is not married or judicially emancipated.
- (4) Prostitution. Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.
- (5) Sexual Activity. Any of the following acts:
 - a. Masturbation, whether done alone or with another human or an animal.
 - b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.
 - c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.
 - d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a

person clad in undergarments or in revealing or bizarre costume.

- e. Excretory functions; provided, however, that this subdivision shall not apply to G.S. 14-190.17A.
- f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.
- (6) Sexually Explicit Nudity. The showing of:
 - a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast; or
 - b. Covered human male genitals in a discernibly turgid state."

Sec. 3. This act shall become effective October 1, 1989, and shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 994

CHAPTER 1023

AN ACT TO REQUIRE THE OWNER OF A DANGEROUS DOG OR POTENTIALLY DANGEROUS DOG TO TAKE PRECAUTIONS AGAINST ATTACKS BY SUCH DOGS, TO IMPOSE CRIMINAL PENALTIES AND CIVIL LIABILITY UPON THE OWNER OF A DANGEROUS DOG WHICH ATTACKS AND CAUSES SERIOUS BODILY INJURY TO A PERSON.

The General Assembly of North Carolina enacts:

Section 1. Chapter 67 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Dangerous Dogs.

" § 67-4.1. Definitions and procedures.

(a) As used in this Article, unless the context clearly requires otherwise and except as modified in subsection (b) of this section, the term:

(1) 'Dangerous dog' means

a. A dog that:

- 1. Without provocation has killed or inflicted severe injury on a person; or
- 2. Is determined by the person or Board designated by the county or municipal authority responsible for

animal control to be potentially dangerous because the dog has engaged in one or more of the behaviors listed in subdivision (2) of this subsection.

- b. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

(2) 'Potentially dangerous dog' means a dog that the person or Board designated by the county or municipal authority responsible for animal control determines to have:

- a. Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or

- b. Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or

- c. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

(3) 'Owner' means any person or legal entity that has a possessory property right in a dog.

(4) 'Owner's real property' means any real property owned or leased by the owner of the dog, but does not include any public right-of-way or a common area of a condominium, apartment complex, or townhouse development.

(5) 'Severe injury' means any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

(b) The provisions of this Article do not apply to:

(1) A dog being used by a law enforcement officer to carry out the law enforcement officer's official duties;

(2) A dog being used in a lawful hunt;

(3) A dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog; or

(4) A dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was committing a willful trespass or other tort, was tormenting, abusing, or assaulting the dog, had tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.

(c) The county or municipal authority responsible for animal control shall designate a person or a Board to be responsible for determining when a dog is a 'potentially dangerous dog' and shall

designate a separate Board to hear any appeal. The person or Board making the determination that a dog is a 'potentially dangerous dog' must notify the owner in writing, giving the reasons for the determination, before the dog may be considered potentially dangerous under this Article. The owner may appeal the determination by filing written objections with the appellate Board within three days. The appellate Board shall schedule a hearing within 10 days of the filing of the objections. Any appeal from the final decision of such appellate Board shall be taken to the superior court by filing notice of appeal and a petition for review within 10 days of the final decision of the appellate Board. Appeals from rulings of the appellate Board shall be heard in the superior court division. The appeal shall be heard *de novo* before a superior court judge sitting in the county in which the appellate Board whose ruling is being appealed is located.

" § 67-4.2. Precautions against attacks by dangerous dogs.

(a) It is unlawful for an owner to:

- (1) Leave a dangerous dog unattended on the owner's real property unless the dog is confined indoors, in a securely enclosed and locked pen, or in another structure designed to restrain the dog;
- (2) Permit a dangerous dog to go beyond the owner's real property unless the dog is leashed and muzzled or is otherwise securely restrained and muzzled.

(b) If the owner of a dangerous dog transfers ownership or possession of the dog to another person (as defined in G.S. 12-3(6)), the owner shall provide written notice to:

- (1) The authority that made the determination under this Article, stating the name and address of the new owner or possessor of the dog; and
- (2) The person taking ownership or possession of the dog, specifying the dog's dangerous behavior and the authority's determination.

(c) Violation of this section is a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100.00) or imprisonment for not more than 30 days or both.

" § 67-4.3. Penalty for attacks by dangerous dogs.

The owner of a dangerous dog that attacks a person and causes physical injuries requiring medical treatment in excess of one hundred dollars (\$100.00) shall be guilty of a misdemeanor punishable by a fine of up to five thousand dollars (\$5,000), imprisonment up to two years, or both.

" § 67-4.4. Strict liability.

The owner of a dangerous dog shall be strictly liable in civil damages for any injuries or property damage the dog inflicts upon a person, his property, or another animal.

"§ 67-4.5. Local ordinances.

Nothing in this Article shall be construed to prevent a city or county from adopting or enforcing its own program for control of dangerous dogs."

Sec. 2. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 1337

CHAPTER 1024

AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AND TO THE SESSION LAWS AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Section 5, subsection (a) of Chapter 426 of the 1989 Session Laws, reads as rewritten:

"(a) The Environmental Management Commission shall adopt water supply watershed classifications and applicable management requirements as required by ~~G.S. 143-214.4(b)~~ G.S. 143-214.5(b) no later than 1 January 1991."

Sec. 2. Section 22(n) of Chapter 752 of the 1989 Session Laws is amended by deleting the phrase "G.S. 40.8(b)" and inserting in lieu thereof "G.S. 135-40.8(b)".

Sec. 3. Effective July 1, 1990, G.S. 7A-249, G.S. 53-67, G.S. 54-142, G.S. 54B-7, and Chapter 55B of the General Statutes are amended by deleting the phrase "Business Corporation Act" wherever it appears and substituting in lieu thereof the phrase "North Carolina Business Corporation Act". Effective July 1, 1990, G.S. 53-135 is amended by deleting the word "'Corporations,'" and inserting in lieu thereof the words "'North Carolina Business Corporation Act,'".

Sec. 4. (a) G.S. 17C-2(b) reads as rewritten:

"(b) 'Criminal justice agencies' means the State and local law-enforcement agencies, the State correctional agencies, other correctional agencies maintained by local governments, and the juvenile justice agencies, but shall not include deputy sheriffs, special deputy sheriffs, sheriffs' jailers, or other sheriffs' department personnel governed by the provisions of Chapter 17E of these General Statutes;"

(b) G.S. 17C-6(13) reads as rewritten:

"(13) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of radio microwave and other speed-measuring instruments and establish the procedures for operation of each approved instrument and standards for calibration and testing for accuracy of each approved ~~instrument,~~ instrument;"

Sec. 5. G.S. 18B-101(13a)(3)(a) reads as rewritten:

"(a) Contains more than ~~a~~ 1000 acres and is made up of privately-owned land and land owned by an association or club having more than 200 members and created for municipal and recreational purposes;"

Sec. 6. G.S. 20-28.2(a)(1) is amended by deleting the phrase "20-16.4,".

Sec. 7. G.S. 20-64.1 reads as rewritten:

"§ 20-64.1. *Revocation of license plates by Utilities Commission.*

The license plates of any carrier of persons or property by motor vehicle for compensation may be revoked and removed from the vehicles of any such carrier for willful violation of any provision of either the North Carolina Truck Act of 1947 or the Bus Act of 1949, or for the willful violation of any lawful rule or regulation made and promulgated by the North Carolina Utilities Commission under said acts. To that end said Commission shall have power upon complaint or upon its own motion, after notice and hearing under the rules of evidence prescribed in ~~G.S. 62-18,~~ G.S. 62-65, to order the license plates of any such offending carrier revoked and removed from the vehicles of such carrier for a period not exceeding 30 days, and it shall be the duty of the Division of Motor Vehicles to execute such orders made by the North Carolina Utilities Commission upon receipt of a certified copy of the same.

This section shall be in addition to and independent of other provisions of law for the enforcement of the motor carrier laws of this State."

Sec. 8. (a) G.S. 25-1-201(5) reads as rewritten:

"(5) 'Bearer' means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank."

(b) G.S. 25-1-201(14) reads as rewritten:

"(14) 'Delivery' with respect to instruments, documents of title, chattel ~~paper~~ paper, or certificated securities means voluntary transfer of possession."

(c) G.S. 25-1-201(20) reads as rewritten:

"(20) 'Holder' means a person who is in possession of a document of title or an instrument or ~~an~~ a certificated

investment security drawn, ~~issued~~ issued, or indorsed to him or to his order or to bearer or in blank."

(d) G.S. 25-5-114(2) is amended by inserting the word "certificated" before the word "security" wherever the word "security" appears in the subsection.

(e) G.S. 25-9-103(3)(a) is amended by adding the phrase "(other than uncertificated securities)" after the words "general intangibles".

(f) G.S. 25-9-103 is amended by adding a new subsection to read:

"(6) Uncertificated Securities.--The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities."

(g) G.S. 25-9-105(l)(i) is amended by inserting the word "certificated" before the word "security" in the phrase "security (defined in G.S. 25-8-102)".

(h) G.S. 25-9-203 is amended by inserting the phrase ", G.S. 25-8-321 on security interests in securities" after the words "collecting bank" in the introductory language of the section.

(i) G.S. 25-9-302(l)(f) is amended by inserting the phrase "or in securities (G.S. 25-8-321)" after "(G.S. 25-4-208)".

(j) G.S. 25-9-304(l) is amended in the second sentence by inserting the words "certificated securities or" before the word "instruments" in the phrase "(other than instruments which constitute part of chattel paper)".

(k) G.S. 25-9-304(4) and G.S. 25-9-305 are amended by inserting the phrase "(other than certificated securities)" after the word "instruments".

(l) G.S. 25-9-304(5) is amended by inserting the phrase "(other than a certificated security)" after the word "instrument" in the introductory language of the subsection.

(m) The catch line of G.S. 25-9-309 reads as rewritten:

"§ 25-9-309. Protection of purchasers of ~~instruments and~~ instruments, documents, documents and securities."

(n) G.S. 25-9-309 is amended by deleting the phrase "G.S. 25-8-301" and substituting in lieu thereof "G.S. 25-8-302".

(o) G.S. 25-9-312(7) reads as rewritten:

"(7) If future advances are made while a security interest is perfected by ~~filing or filing~~ the taking of possession, or under G.S. 25-8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the

security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

(p) The Revisor of Statutes shall cause to be printed along with the amendments set forth in this section all relevant portions of the Official Comments to the 1977 amendments to Articles 1, 5, and 9 of the Uniform Commercial Code as prepared by the Commissioners on Uniform State Laws and such other explanatory comments as the Revisor may deem appropriate.

Sec. 9. (a) G.S. 25-8-102, as amended by Chapter 588 of the 1989 Session Laws, is amended in subdivision (1)(b) by deleting the word "and" at the end of clause (ii) and by deleting the period at the end of clause (iii) and inserting in lieu thereof a comma followed by the word "and".

(b) G.S. 25-8-201(1)(a1), as enacted by Chapter 588 of the 1989 Session Laws, is amended by deleting the word "Create" and substituting in lieu thereof the word "Creates".

(c) G.S. 25-8-308(7)(b), as enacted by Chapter 588 of the 1989 Session Laws, is amended by deleting the word "registering" and substituting in lieu thereof the word "registered".

(d) G.S. 25-8-403(6), as enacted by Chapter 588 of the 1989 Session Laws, is amended by deleting "G.S. 25-8-4" and substituting in lieu thereof "G.S. 25-8-408".

Sec. 10. (a) G.S. 25-9-203(4) reads as rewritten:

"(4) A transaction, although subject to this article, is also subject to the North Carolina Consumer Finance Act (being G.S. 53-164 through 53-191), G.S. 24-1 and 24-2, and G.S. 91-1 through 91-8, the Pawnbrokers Modernization Act of 1989 (being Chapter 91A of the General Statutes), the Retail Installment Sales Act (being Chapter 25A of the North Carolina General Statutes), and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

(b) G.S. 66-164(1) reads as rewritten:

"(1) 'Dealer' means a person who engages in the business of purchasing precious metals from the public in the form of jewelry, flatware, silver services or other forms and holds himself out to the public by signs, advertising or other methods as engaging in such purchases including any independent contractor purchasing precious metals under any arrangement in any department store; provided,

however, that permanently located retail merchants shall be exempted insofar as they make purchases directly from manufacturers or wholesalers of precious metals for their inventories. Provided further, a permanently located retail merchant who is primarily engaged in the business of purchasing or acquiring jewelry, secondhand furniture, antique furniture, objects of art, artifacts, nonprecious metal collector items, antiques and other used household furnishings or fixtures for resale to the public, and who purchases precious metals, articles or items from the public only incidentally to his main business, may be exempted as provided in G.S. 66-166 if his total purchases or acquisitions of precious metals from the public constituted ten percent (10%) or less in dollar volume of the total purchases or acquisitions in dollar volume made by such merchant for all such secondhand items or articles in the 12-month period next preceding the date of application for an exemption under G.S. 66-166. Provided further that pawnbrokers as defined in ~~G.S. 91-1~~ G.S. 91A-3 shall be exempted insofar as they accept pawns or pledges of items made of precious metals under the provisions of Chapter ~~94~~ 91A of the General Statutes."

Sec. 11. G.S. 31B-7 reads as rewritten:

" § 31B-7. *Short title.*

This Chapter may be cited as the Renunciation of ~~Transfers by Will, Intestacy, Appointment or Insurance Contract~~ Property and Renunciation of Fiduciary Powers Act."

Sec. 11.1. G.S. 45-21.44 reads as rewritten:

" § 45-21.44. *Validation of foreclosure sales when provisions of G.S. 45-21.17(c)(2) or G.S. 45-21.17(2) not complied with.*

In all cases prior to ~~March 1, 1974,~~ May 1, 1990, where mortgages or deeds of trust on real estate with power of sale have been foreclosed pursuant to said power by proper advertisement except that the date of the last publication was from seven to 20 days preceding the date of sale, all such sales are fully validated, ratified, and confirmed and shall be as effective to pass title to the real estate described therein as fully and to the same extent as if the provisions of G.S. 45-21.17(c)(2) or G.S. 45-21.17(2) had been fully complied with."

Sec. 12.1. (a) G.S. 55-1-20(i) reads as rewritten:

"(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one exact or conformed copy (except as provided in G.S. 55-5-03 and G.S. 55-15-09), and all fees ~~and taxes~~ required by this Chapter."

(b) G.S. 55-15-03(c) reads as rewritten:

"(c) If the Secretary of State finds that the application conforms to law he shall, when all ~~taxes and~~ fees have been tendered as prescribed in this Chapter:

- (1) Endorse on the application and an exact or conformed copy thereof the word 'filed' and the hour, day, month, and year of the filing thereof;
- (2) File in his office the application and the certificate of existence (or document of similar import as described in subsection (b) of this section);
- (3) Issue a certificate of authority to transact business in this State to which he shall affix the exact or conformed copy of the application; and
- (4) Send to the foreign corporation or its representative the certificate of authority, together with the exact or conformed copy of the application affixed thereto."

Sec. 12.2. G.S. 55-1-25(b) reads as rewritten:

"(b) The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with his name and official title and the date and time of filing, on both the original and the document copy. After filing a document, except as provided in G.S. 55-5-03 and ~~G.S. 55-15-10~~, G.S. 55-15-09, the Secretary of State shall deliver the document copy to the domestic or foreign corporation or its representative."

Sec. 12.3. G.S. 55-1-26(a) reads as rewritten:

"(a) If the Secretary of State refuses to file a document delivered to his office for filing, the ~~domestic or foreign corporation person~~ tendering the document for filing may, within 30 days after such refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for his refusal to file. The appeal to the superior court is not governed by the Administrative Procedure Act and shall be determined upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances."

Sec. 12.4. G.S. 55-1-40(10) reads as rewritten:

"(10) 'Foreign corporation' means a corporation for profit ~~or a corporation having capital stock~~ incorporated under a law other than the law of this State."

Sec. 12.5. G.S. 55-4-01(c) reads as rewritten:

"(c) A ~~corporation~~ person may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his

records from one or more of the names described in subsection (b). The Secretary of State shall authorize use of the name applied for if:

- (1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the ~~applying corporation; applicant;~~ or
- (2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State."

Sec. 12.6. G.S. 55-5-03(a) reads as rewritten:

"(a) A registered agent may resign his agency appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also discontinued. The statement must include or be accompanied by a certification from the registered agent that he has mailed or delivered to the corporation at its last known address written notice of this resignation. Such certification shall include the name and title of the officer notified, if any, and the address to which the notice was mailed or delivered."

Sec. 12.7. G.S. 55-6-21(e) reads as rewritten:

"(e) The corporation may place in escrow shares issued for a contract for future services or benefits or ~~to~~ for a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefit received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part."

Sec. 12.8. G.S. 55-6-23(b)(3) reads as rewritten:

"(3) A majority of the votes entitled to be cast by the class or series to be issued approve the issuance of not more than a stated number of shares within a period of not more than one year after such ~~authorization.~~ approval."

Sec. 12.9. G.S. 55-6-40(f) reads as rewritten:

"(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent ~~subordinated~~ otherwise provided by agreement."

Sec. 12.10. G.S. 55-7-21.1 reads as rewritten:

"§ 55-7-21.1. *Rights of holders of debt securities.*

In addition to any rights otherwise lawfully conferred, the articles of incorporation of the corporation may confer upon the holders of any bonds, debentures or other debt obligations issued or to be issued by the corporation any one or more of the following powers and rights upon such terms and conditions as may be prescribed in the articles of incorporation:

- (1) The power to vote on any matter either in conjunction with or to the full or partial exclusion of its ~~shareholders;~~ shareholders, notwithstanding G.S. 55-6-01(c)(1);
- (2) The right to inspect the corporate books and records;
- (3) Any other rights concerning the corporation which its shareholders have or may have. ~~Any such power or right shall not be diminished, as to bonds, debentures or other obligations then outstanding, except by an amendment of the articles of incorporation approved by the vote or written consent of the holders of a majority in principal amount thereof or such larger percentage as may be specified in the articles of incorporation.~~

Any such power or right shall not be diminished, as to bonds, debentures or other obligations then outstanding, except by an amendment of the articles of incorporation approved by the vote or written consent of the holders of a majority in principal amount thereof or such larger percentage as may be specified in the articles of incorporation."

Sec. 12.11. G.S. 55-7-28(e) reads as rewritten:

"(e) Shareholders of a corporation incorporated in this State shall have the right to cumulate their votes for directors if (i)

- (1) The corporation was in existence prior to July 1, 1957, under a charter which does not grant the right of cumulative voting and at the time of the election the stock transfer book of such corporation discloses, or it otherwise appears, that there is at least one stockholder who owns or controls more than one-fourth of the voting stock of such corporation. (Shares represented at a meeting by revocable proxy relating to that meeting or adjourned meetings thereof shall not be deemed shares 'controlled' within the meaning of this subsection), or if (ii)
- (2) The corporation was incorporated on or after July 1, 1957, and before July 1, 1990,

unless, when the stock transfer books are closed or at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders, shares of any class or series are listed on a national securities exchange or are held of record by more than 2,000 shareholders. This right to vote cumulatively may be

denied or limited by amendment to the articles of incorporation, but no such amendment shall be made when the number of shares voting against the amendment would be sufficient to elect a director by cumulative voting if such shares are entitled to be voted cumulatively for the election of directors."

Sec. 12.12. G.S. 55-8-10(c) reads as rewritten:

"(c) A vacancy that will occur ~~at~~ upon a specific later date or subsequent event (by reason of a resignation effective ~~at~~ upon a later date or subsequent event under G.S. 55-8-07(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs."

Sec. 12.13. G.S. 55-8-40(e) reads as rewritten:

"(e) Whenever a specific office is referred to in this Chapter, it shall be deemed to include any ~~person~~ individual who, individually alone or collectively with one or more other ~~persons~~, individuals, holds or occupies such office."

Sec. 12.14. G.S. 55-8-57(b) is amended by deleting the words "on or" as they appear in the phrase "on or prior to July 1, 1990".

Sec. 12.15. G.S. 55-9-05 is amended in clause (iv) by inserting the word "a" between "of" and "corporation".

Sec. 12.16. G.S. 55-9A-01(b)(3)f reads as rewritten:

"f. Pursuant to the sale of such shares by the covered corporation or its parent or subsidiary ~~corporation, provided that in such case a written agreement relating to such sale to which the covered corporation is a party may permit the purchasers of such shares as a group also to purchase in any other manner within 90 days before or after such sale up to the same aggregate number of shares as were sold by the covered corporation or its parent or subsidiary corporation without any such purchases being a 'control share acquisition', corporation.~~"

Sec. 12.17. G.S. 55-11-03(f)(2) reads as rewritten:

"(2) On a plan of share exchange by each class or series of shares included to be acquired in the exchange, with each class or series constituting a separate voting group."

Sec. 12.18. G.S. 55-13-02(a)(1) reads as rewritten:

"(1) Consummation of a plan of merger to which the corporation (other than a parent corporation in a merger under G.S. 55-11-04) is a party unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;"

Sec. 12.19. G.S. 55-14-01 reads as rewritten:

"§ 55-14-01. *Dissolution by incorporators or ~~initial~~ directors.*

(a) The board of directors or, if the corporation has no directors, a majority of the incorporators of a corporation that has not issued shares may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

- (1) The name of the corporation;
- (1a) The names and addresses of its officers, if any;
- (1b) The names and addresses of its directors, if any, or if none, the names and addresses of its incorporators;
- (2) The date of its incorporation;
- (3) That none of the corporation's shares has been issued;
- (4) That no debt of the corporation remains unpaid;
- (5) Reserved for future codification purposes; and
- (6) That a majority of the incorporators or ~~initial~~ the board of directors authorized the dissolution.

(b) A corporation is dissolved upon the effective date of its articles of dissolution."

Sec. 12.20. G.S. 55-15-01(a) reads as rewritten:

"(a) A foreign corporation may not transact business in this State until it obtains a certificate of authority from the Secretary of ~~State~~, State under this Chapter or under Chapter 55A of the General Statutes."

Sec. 12.21. G.S. 55-15-03(a)(5) reads as rewritten:

- "(5) The street address, and the mailing address if different from the street address, of its registered office in this ~~State~~ State, the county in which the registered office is located, and the name of its registered agent at that office; and".

Sec. 12.22. G.S. 55-15-04(b) reads as rewritten:

"(b) A foreign corporation may apply for an amended certificate of authority by delivering an application to the Secretary of State for filing that sets forth:

- (1) The name of the foreign corporation and the name in which the corporation is authorized to transact business in North Carolina if different;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date it was originally authorized to transact business in this State;
- (4) A statement of the change or changes being made.

Except for the content of the application, the ~~The~~ requirements of G.S. 55-15-03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section."

Sec. 12.23. G.S. 55-15-20(b1) reads as rewritten:

"(b) If the Secretary of State finds that such application conforms to law, he shall:

- (1) Endorse on the application and an exact or conformed copy thereof the word 'filed', and the hour, day, month and year of the filing thereof;
- (2) File the application in his office; ~~and~~
- (3) Issue a certificate of withdrawal to which he shall affix the exact or conformed copy of the ~~application~~ application; and
- (4) Send to the foreign corporation or its representative the certificate of withdrawal together with the exact or conformed copy of the application affixed thereto."

Sec. 12.24. G.S. 55-15-31(b) reads as rewritten:

"(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist ~~with~~ within 60 days after notice is mailed, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and mail a copy to the foreign corporation."

Sec. 12.25. G.S. 55-15-32(a) reads as rewritten:

"(a) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the superior court of Wake County within 30 days after ~~service of~~ the certificate of revocation is ~~mailed~~ mailed to the foreign corporation by the Secretary of State. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the revocation. The petition shall have attached to it copies of the corporation's certificate of authority and the Secretary of State's certificate of revocation. The appeal to the superior court shall be determined upon such further evidence, notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The foreign corporation shall have the burden of establishing that it is entitled to have the revocation set aside."

Sec. 12.26. G.S. 55-16-02(b)(1) reads as rewritten:

- "(1) Records of any final action taken with or without a meeting by the board of directors, or by a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the ~~shareholders~~ shareholders and records of action taken by the ~~shareholders or board of directors~~ without a meeting, to the extent not subject to inspection under G.S. 55-16-02 (a);".

Sec. 13. G.S. 62-15(h) reads as rewritten:

"(h) The executive director is authorized to employ, subject to approval by the State Budget Officer, expert witnesses and such other professional expertise as the executive director may deem necessary from time to time to assist the public staff in its participation in Commission proceedings, and the compensation and expenses therefor shall be paid by the utility or utilities participating in said proceedings. Such compensation and expenses shall be treated by the Commission, for rate-making purposes, in a manner generally consistent with its treatment of similar expenditures incurred by utilities in the presentation of their cases before the Commission. An accounting of such compensation and expenses shall be reported annually to the Joint Legislative Utility Review Committee and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate."

Sec. 14. G.S. 62-110.2(e) reads as rewritten:

"(e) The furnishing of electric service in any area which becomes a part of any municipality after April 20, 1965, either by annexation or incorporation, (whether or not such area, or any portion thereof, shall have been assigned pursuant to subsection (c) of this section) shall be subject to the provisions of Article 41 of Subchapter X of Chapter 160 Part 2, Article 16 of Chapter 160A of the General Statutes, and any provisions of this section inconsistent with said Article shall not be applicable within such area after the effective date of such annexation or incorporation."

Sec. 15. G.S. 62-118(a) and G.S. 62-262.2(e) are amended by deleting "G.S. 62-262(h)" and substituting in lieu thereof "G.S. 62-262(k)".

Sec. 16. G.S. 74-64(a)(3) reads as rewritten:

"(3) If payment of any civil penalty assessed pursuant to this section is not received by the Department or equitable settlement reached within 30 days following notice to the operator of the assessment of the civil penalty, or within 30 days following the denial of any appeal by the operator pursuant to ~~G.S. 74-61 and 74-62~~, G.S. 74-61, the Department shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty."

Sec. 17. G.S. 90-95(d)(2), as amended by Section 1, Chapter 641 of the 1989 Session Laws, is amended by deleting "phencyclidine" and substituting in lieu thereof the correct spelling, "phencyclidine".

Sec. 18. G.S. 90A-30(c)(2) reads as rewritten:

"(2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in G.S. 150-36, G.S. 150B-36. "

Sec. 19. (a) G.S. 105-230 reads as rewritten:

" § 105-230. *Charter suspended for failure to report.*

If a corporation required by the provisions of this Subchapter to file any report or return or to pay any tax or fee, either as a public utility (not as an agency of interstate commerce) or as a corporation incorporated under the laws of this State, or as a foreign corporation domesticated in or doing business in this State, or owning and using a part or all of its capital or plant in this State, fails or neglects to make any such report or return or to pay any such tax or fee for 90 days after the time prescribed in this Subchapter for making such report or return, or for paying such tax or fee, the Secretary of Revenue shall certify such fact to the Secretary of State. The Secretary of State shall thereupon suspend the articles of incorporation of any such corporation which is incorporated under the laws of this State by appropriate entry upon the records of his office, or suspend the certificate of authority of any such foreign corporation to do business in this State by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The Secretary of State shall immediately notify by mail every such domestic or foreign corporation of the action taken by him, ~~and also shall immediately certify such suspension to the register of deeds of the county in which the principal office or registered office of such corporation is located in this State with instructions to the register of deeds, and it shall be the register's duty to record and index the suspension in the Record of Incorporations. After the recordings, the register may destroy the certificate, him.~~"

(b) G.S. 105-232 reads as rewritten:

" § 105-232. *Corporate rights restored; receivership and liquidation.*

Any corporation whose articles of incorporation or certificate of authority to do business in this State has been suspended by the Secretary of State, as provided in G.S. 105-230, which complies within five years after such suspension, with all the requirements of this Subchapter and pays all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to said suspension, in the same manner as if such suspension had not taken place), and upon payment to the Secretary of Revenue of a fee of twenty-five dollars (\$25.00) to cover the cost of reinstatement, shall be entitled to exercise again its rights, privileges, and franchises in this State. The Secretary of Revenue shall notify the

Secretary of State of such compliance and the Secretary of State shall reinstate the corporation by appropriate entry upon the records of his office. The Secretary of State shall immediately notify the corporation of the ~~reinstatement and certify such reinstatement to the register of deeds of the county in which the suspension was recorded. It shall thereupon be the register's duty, upon receipt of the fee specified in G.S. 161-10 from the corporation, to record and index the reinstatement in the Records of Corporations. The Register of Deeds shall note the fact of recordation on the certificate and forward it to the corporation or its representative, reinstatement.~~

When the certificate or articles of incorporation in this State have been suspended by the Secretary of State, as provided in G.S. 105-230, or similar provisions of prior or subsequent Revenue Acts, and there remains property held in the name of the corporation, or undisposed of at the time of such suspension, or there remain possibilities of reverters, reversionary interests, rights of reentry or other future interests that may accrue to the corporation or its successors or stockholders, and the time within which the corporate rights might be restored as provided by this section has expired, any stockholder or any bona fide creditor or other interested party may apply to the superior court for the appointment of a receiver. Application for such receiver may be made in a civil action to which all stockholders or their representatives or next of kin shall be made parties. Stockholders whose whereabouts are unknown and unknown stockholders and unknown heirs and next of kin of deceased stockholders may be served by publication, as well as creditors, dealers and other interested persons, and a guardian ad litem may be appointed for any stockholders or their representatives who may be an infant or incompetent. The receiver shall enter into such bond with such sureties as may be set by the court and shall give such notice to creditors by publication or otherwise as the court may prescribe. Any creditor who shall fail to file his claim with the receiver within the time set shall be barred of the right to participate in the distribution of the assets. Such receiver shall have authority to sell such property or possibilities of reverters, reversionary interests, rights of reentry, or other future interests, upon such terms and in such manner as shall be ordered by the court, apply the proceeds to the payment of any debts of such corporation, and distribute the remainder among the stockholders or their representatives in proportion to their interests therein. Shares due to any stockholder who is unknown or whose whereabouts are unknown shall be paid into the office of the clerk of the superior court, by him to be disbursed according to law. In the event the stock books of the corporation shall be lost or shall not reflect the latest stock transfers, the court shall determine the

respective interests of the stockholders from the best evidence available, and the receiver shall be protected in acting in accordance with such finding. Such proceeding is authorized for the sole purpose of providing a procedure for disposing of the corporate assets by the payment of corporate debts, including franchise taxes which had accrued prior to the suspension of the corporate charter and any other taxes the assessment or collection of which is not barred by a statute of limitations, and by the transfer to the stockholders or their representatives their proportionate shares of the assets owned by the corporation."

(c) This section shall become effective July 1, 1990.

Sec. 20. G.S. 106-140.1(a) reads as rewritten:

"(a) On or before December 31 of each year, every person doing business in North Carolina and operating as a ~~wholesaler as defined in G.S. 106-121(14f) or manufacturer as defined in G.S. 106-121(11a) or repackager as defined in G.S. 106-121(14e)~~ wholesaler, manufacturer, or repackager, as those terms are defined in subsection (j) of this section, shall register with the Commissioner his name and business location(s) in North Carolina. If said person has no business locations in North Carolina, he shall register his name and location of his corporate offices."

Sec. 21. G.S. 110-92 reads as rewritten:

"§ 110-92. *Duties of State and local agencies.*

When requested by an operator of a day-care facility or by the Secretary of Human Resources, it shall be the duty of local and district health departments to visit and inspect a day-care facility to determine whether the facility complies with the health and sanitation standards required by this Article and with the minimum health and sanitation standards adopted as rules by the Commission for Health Services as authorized by G.S. 110-91(1), and to submit written reports on such visits or inspections to the Department of Human Resources on forms approved and provided by the Department of Environment, Health, and Natural Resources.

When requested by an operator of a day-care facility or by the Secretary, it shall be the duty of the local and district health departments, and any building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a day-care facility for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on such visits or inspections in writing to the Secretary of Human Resources on forms provided by the Department so that such reports may serve as the basis for action

or decisions by the Secretary or Department as authorized by this Article."

Sec. 22. G.S. 113-202.1(c), as enacted by Chapter 423 of the 1989 Session Laws, is amended by deleting "G.S. 113A-202(d)" and inserting in lieu thereof "G.S. 113-202(d)".

Sec. 23. (a) G.S. 120-123(20) is repealed.

(b) G.S. 120-123(34a) is repealed.

(c) G.S. 120-123(44) is amended by deleting "G.S. 143B-168.1" and inserting in lieu thereof "G.S. 143B-168.3".

(d) G.S. 120-123(52) is amended by deleting "G.S. 115C-489.3" and substituting in lieu thereof "G.S. 115C-489.4".

Sec. 24. G.S. 120-70.71(11), as enacted by Section 10.1 of Chapter 802 of the 1989 Session Laws, is amended by deleting the word "and" following the semicolon.

Sec. 25. G.S. 120-166(b)(4) is amended by deleting "G.S. 160-31" and substituting in lieu thereof "G.S. 160A-31".

Sec. 26. (a) G.S. 122C-3(15) reads as rewritten:

"(15) 'Guardian' means a person appointed as a guardian of the person or general guardian by the court under Chapters ~~7A, 33, or 35A~~ 7A or 35A or former Chapters 33 or 35 of the General Statutes."

(b) G.S. 122C-203 is amended by deleting the phrase "Chapters 33 or 35A" and substituting in lieu thereof "Chapter 35A or former Chapters 33 or 35".

(c) G.S. 122C-242(b) is amended by deleting the phrase "Chapters 33 or 35" and substituting in lieu thereof "Chapter 35A".

(d) G.S. 122C-53 and G.S. 122C-241 are amended by deleting the phrase "Chapters 33 or 35" wherever it occurs and inserting in lieu thereof the phrase "Chapter 35A or former Chapters 33 or 35".

Sec. 27. G.S. 122C-55(a1) is amended by deleting "North Carolina Memorial Hospital" and inserting in lieu thereof "the University of North Carolina Hospitals at Chapel Hill" throughout the subsection.

Sec. 27.1. Section 1 of Chapter 823, Session Laws of 1989 is amended by deleting "G.S. 122C-161(a)", and substituting "G.S. 122C-261(a)".

Sec. 28. G.S. 128-26(r)(5) reads as rewritten:

"(5) The member makes a lump sum payment into the Annuity Saving Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the retirement system's liabilities, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit

commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the ~~advise~~ advice of the actuary, plus an administrative fee to be determined by the Board of Trustees."

Sec. 29. G.S. 130A-33.30 reads as rewritten:

"§ 130A-33.30. *Commission of Anatomy -- creation; powers and duties.*

There is hereby created the Commission of Anatomy of the Department of Environment, Health, and Natural Resources with the power and duty to adopt rules for the distribution of dead human bodies and parts thereof for the purpose of promoting the study of anatomy in the State of North Carolina. The Commission is authorized to receive dead bodies pursuant to ~~G.S. 90-216.6~~ G.S. 130A-415 and to be a donee of a body or parts thereof pursuant to ~~Article 15A of Chapter 90 Part 3, Article 16 of Chapter 130A of the General Statutes known as the Uniform Anatomical Gift Act and to distribute such bodies or parts thereof pursuant to the rules adopted by the Commission."~~

Sec. 30. (a) G.S. 130A-310.5(c), as amended by Section 4 of Chapter 286 of the 1989 Session Laws, is amended by deleting the phrase "Emergency Hazardous Waste Site Remedial Fund" and substituting in lieu thereof "Emergency Response Fund".

(b) G.S. 130A-310.7(a), as amended by Section 6 of Chapter 286 of the 1989 Session Laws, is amended by deleting the semicolon following the word "substance" and substituting a comma in lieu thereof.

(c) G.S. 130A-310.22, as enacted by Section 10 of Chapter 286 of the 1989 Session Laws, is amended by deleting the phrase "42 U.S.C. § 9604(b)(9)" and inserting in lieu thereof "42 U.S.C. § 9604(c)(9)".

Sec. 31. G.S. 130B-15(e), as enacted by Chapter 168 of the 1989 Session Laws, reads as rewritten:

"(e) The Commission shall provide through its own personnel, private contractors, cooperative agreement with other governmental agencies, or any combination thereof, any active maintenance or remedial actions that may be required. Payment for the cost thereof shall be made from the Long-Term Care Fund established pursuant to ~~G.S. 130B-16~~, G.S. 130B-17."

Sec. 32. G.S. 143-166.2(d) is amended by deleting "Article 26 of Chapter 130" and substituting in lieu thereof "Article 7 of Chapter 131E".

Sec. 33. G.S. 143-215.1(b1)(4), as enacted by Section 2 of Chapter 453 of the 1989 Session Laws, reads as rewritten:

"(4) Requirements of subsection (a) of this section that the Department review and ~~approval~~ approve of each individual facility."

Sec. 34. G.S. 143-350 is amended by deleting "G.S. 143-214" and substituting in lieu thereof "G.S. 143B-282".

Sec. 35. (a) G.S. 143B-138(b)(9) is amended by deleting "Mental Retardation" in the phrase "Division of Mental Health, Mental Retardation, and Substance Abuse Services" and substituting in lieu thereof "Developmental Disabilities".

(b) G.S. 143B-138(b)(10) is amended by deleting "Mental Retardation" in the phrase "Commission for Mental Health, Mental Retardation, and Substance Abuse Services" and substituting in lieu thereof "Developmental Disabilities".

Sec. 36. G.S. 143B-426.40 is amended by deleting "G.S. 147-58" and substituting in lieu thereof "G.S. 147-64.6, G.S. 147-64.7,".

Sec. 37. G.S. 143B-426.39(14), as enacted by Section 4 of Chapter 239 of the 1989 Session Laws, is amended by deleting the word "to" following the word "thereof" in the first sentence of the subdivision.

Sec. 38. (a) G.S. 159I-15(d) is amended in the second sentence by deleting the phrase "place or place" and substituting in lieu thereof the phrase "place or places".

(b) G.S. 159I-15(e) is amended in the third paragraph by deleting the word "at" as it appears in the phrase "such price or prices at the Local Government Commission shall determine" and substituting in lieu thereof the word "as".

(c) G.S. 159I-16(c) is amended in the second sentence by deleting the word "noticed" as it appears in the phrase "irrespective of whether such parties have noticed thereof" and substituting in lieu thereof the word "notice".

(d) G.S. 159I-16(d) is amended by inserting a comma after the word "Agency" as it appears in the phrase "costs of operation of the Agency".

(e) G.S. 159I-30(h) is amended:

(1) In the first sentence by deleting the word "form" as it appears in the phrase "40 years form their date" and substituting in lieu thereof the word "from"; and

(2) In the second sentence by deleting the phrase "place or place" and substituting in lieu thereof the phrase "place or places".

Sec. 39. G.S. 160A-372, as amended by Chapter 747 of the 1987 Session Laws, is amended by deleting "G.S. 136-10 or G.S.

136-11" and inserting in lieu thereof "G.S. 136-66.10 or G.S. 136-66.11".

Sec. 40. G.S. 160A-400.2, as enacted by Chapter 706 of the 1989 Session Laws, is amended by deleting "160A-400.15" and inserting in lieu thereof "160A-400.14".

Sec. 41. G.S. 160A-617, as enacted by Chapter 740 of the 1989 Session Laws, is amended by deleting the word "of" in the phrase "In addition of the powers granted by this Article" and inserting in lieu thereof the word "to".

Sec. 42. G.S. 163-125(f), as enacted by Chapter 325 of the 1989 Session Laws, is amended by deleting "G.S. 163-124(c)" as it occurs in the phrase "in the case of a write-in candidate, the last day for filing petitions under G.S. 163-124(c)", and substituting in lieu thereof "G.S. 163-123(c)".

Sec. 43. G.S. 163-132.2(c) reads as rewritten:

"(c) If the Executive Secretary-Director of the State Board does not find that the filed precinct boundaries are coterminous with the current township boundaries, current municipal boundaries, census block boundaries, or a combination of those boundaries, he shall not approve those precinct boundaries but shall alter the precinct boundaries to be coterminous with the census block boundaries, municipal boundaries or township boundaries nearest to those existing precinct boundaries and these altered precincts shall then be the official precincts. If the Executive Secretary-Director of the State Board finds that a precinct does not consist solely of contiguous territory, he shall alter the precinct boundary so that it consists solely of contiguous territory, except where the non-contiguity is caused by the operation of ~~G.S. 160A-132.5A~~, G.S. 163-132.5A."

Sec. 44. Section 42 of Chapter 770, Session Laws of 1989, is amended by deleting "Chapter 187, Session Laws of 1987", and substituting "Chapter 187, Session Laws of 1989".

Sec. 45. Section 5 of Chapter 758, Session Laws of 1989, reads as rewritten:

"Sec. 5. Nothing in this ~~Article~~ act shall be construed to affect the authority of the Department of Human Resources otherwise provided by law to license or regulate any health service facility ~~of~~ or domiciliary service facility."

Sec. 46. (a) G.S. 136-176(a)(2), as enacted by Section 1.1 of Chapter 692, Session Laws of 1989, reads as rewritten:

"(2) Motor vehicle use tax deposited in the fund under ~~G.S. 105-171~~ G.S. 105-173."

(b) Section 68.2 of Chapter 770, Session Laws of 1989, is repealed.

Sec. 47. The provisions of Sections 7, 8, and 9 of Chapter 751, Session Laws of 1989, do not apply to references to the United States Department of Commerce.

Sec. 48. G.S. 159I-3(a)(6) as enacted by Chapter 756 of the 1989 Session Laws reads as rewritten:

"(6) 'Division' means the ~~Division of Health Services~~ Division of Solid Waste Management of the Department of Environment, Health, and Natural Resources and any successor of said Division."

Sec. 49. G.S. 159I-7(b) as enacted by Chapter 756 of the 1989 Session Laws reads as rewritten:

"(b) Moneys in the Solid Waste Management Loan Fund may be invested in the same manner as permitted for investments of funds belonging to the State or held in the State treasury. Interest earnings derived from such investments shall be credited to the Fund, credited to such other use as may be provided in a trust agreement or resolution securing any bonds or notes issued under the provisions of this Chapter, or credited to such other use, including the payment of administrative expenses of the Agency, the costs of research for solid waste management programs and the making of grants for such research, as may be directed by the Board.

(b1) In connection with solid waste research to be contracted for by the ~~Solid Waste Branch, Division, the Secretary of the Department to which that Branch is assigned, statutorily,~~ Environment, Health, and Natural Resources shall negotiate, with the Board of the Agency, a memorandum of agreement which shall contain necessary rules and provisions for certifying that proper competitive bid procedures, and when appropriate, proper sole source bid procedures, for contracts have been executed in connection with a Request for Proposals (RFP); and, which shall state that a previously determined one-to-one match requirement from private sector sources has been met in accordance with rules and provisions set out in the memorandum of agreement, and that the Secretary is ready to award a contract for a specified amount. The Treasurer, at the direction of the board, shall certify that funds are available and that the purpose of the contract is consistent with provisions for the use of solid waste loan program proceeds."

Sec. 50. This act is effective upon ratification, except as otherwise provided herein, but Sections 12.1 through 12.26 of this act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 1345

CHAPTER 1025

AN ACT TO MAKE VARIOUS CHANGES TO THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-7 reads as rewritten:

" § 126-7. *Compensation of State employees.* (a) It is the policy of the State to compensate its employees at a level sufficient to encourage excellence of performance and to maintain the labor market competitiveness necessary to recruit and retain a competent work force. To this end, salary increases to State employees shall be based, in part, on each individual employee's job performance and, in part, on general increases given to all State employees.

(b) To guide the Governor and the General Assembly in making appropriations to further the compensation policy of the State, the State Personnel Commission shall conduct annual compensation surveys. The Commission shall determine the percent of funds appropriated for salary increases to be reserved for a general increase for all State employees and the percent to be reserved for performance-based increases for eligible employees. The Commission shall present its recommendation on the percentages and the results of the compensation survey to the Appropriations Committees of the House and Senate no later than two weeks after the convening of the legislature in odd years and May 1st, of even years. The amount reserved for performance increases shall not be less than twenty-five percent (25%) nor more than seventy-five percent (75%) of the total allocation.

(c) Performance increases shall be based on performance appraisals of all employees conducted by each department, agency, and institution. The State Personnel Commission, under the authority of G.S.126-4(8), shall adopt policy and regulations for performance appraisal. The policy and regulations shall include the following:

- (1) The performance appraisal system of each department, agency, or institution shall be designed and administered to ensure that performance increases are distributed fairly and reward only performance that exceeds performance requirements.
- (2) To be eligible to distribute its share of the performance increase allocation, a department, agency, or institution shall have an operative performance appraisal system which has been approved by the State Personnel Director. The performance appraisal system adopted shall use a rating

~~scale of at least five levels, with the top three levels qualifying for performance increases, and of:~~

- ~~a. Five levels, with the top two levels qualifying for performance increases; or~~
- ~~b. Other than five levels, with the levels qualifying for performance increases to be designated by the State Personnel Commission, for those job classifications in those employing units where a department, agency, or institution demonstrates to the State Personnel Commission that some number of levels other than five would be appropriate, and the State Personnel Commission, after conducting a public hearing, determines that a rating scale of other than five levels is more appropriate than five levels for a particular job classification within a particular employing unit.~~

There shall be a presumption that a five-level system is the most appropriate system, and the department, agency, or institution must demonstrate with clear and convincing evidence that a different system is more appropriate. The performance appraisal system adopted shall adhere to modern personnel management techniques and practices in common use in the public and private sectors. Departments, agencies, and institutions with existing performance appraisal systems which use a rating scale which is not consistent with the five-level system described above shall have until July 1, 1991, to bring their systems into compliance with this subsection.

- (3) The State Personnel Director shall help departments, agencies, and institutions to establish and administer their performance appraisal systems and shall provide initial and ongoing training in performance appraisal and performance system administration.
- (4) An employee whose performance exceeds performance requirements shall receive a performance increase unless the employee's supervisor justifies in writing to the employee the decision not to award the performance increase. An employee whose performance does not exceed performance requirements shall not receive a performance increase. Standards for performance and standards for performance pay increases may be established for each department, agency, or institution. These standards may not set limits so as to preclude an employee whose performance exceeds performance requirements from consideration for an increase.

- (5) The State Personnel Director shall set the performance increase ranges allowable for levels of performance that exceed performance requirements. ~~Absent the supervisor's written justification, an employee whose performance exceeds expectations shall receive a percentage increase equal to the midrange value for his rating level. With the supervisor's written justification, an individual employee's increase may vary above or below the midrange value within the allowable range.~~ An employee whose performance exceeds expectations shall receive a percentage increase equal to the midrange value for his rating, unless the supervisor can justify an increase above or below the midrange value within the allowable range. The supervisor shall give an employee written justification of his decision to award an increase above or below the midrange value when the employee requests written justification. A supervisor's performance appraisal plan, evaluation standards for each employee, and individual employee ratings and recommended performance increase amounts, with justification, shall be reviewed and approved by that supervisor's next higher level supervisor.
- (5a) If an employee is otherwise eligible for a performance increase and is at the top of (but does not exceed) a pay scale, the employee shall receive a performance increase in the form of a performance bonus. This performance bonus shall be a one-time, lump-sum award paid separately from any other payment to the employee for the year. Such award shall not serve to increase the base pay of such employee. An award of this bonus pursuant to this subdivision does not affect:
- a. The value of the top of any pay scale; and
 - b. The employee's current salary, which will remain at the top of the pay scale.
- Except as provided in this subdivision, all other provisions of this subsection shall apply to an employee at the top of a pay scale.
- (6) The State Personnel Director may suspend any performance increase that does not appear to meet the intent of the provisions of the performance pay system and require the originating department, agency, or institution to reconsider or justify the increase.
- (7) An employee who disputes the fairness of his performance evaluation or the sufficiency of the increase awarded or who believes that he was unfairly denied a performance

increase shall first discuss the problem with his supervisor. Appeals of the supervisor's decision shall be made only to the grievance committee or internal performance review board of the department, agency, or institution which shall make a recommendation to the head of the department, agency, or institution for final decision. The State Personnel Director shall help a department, agency, or institution establish an internal performance review board or, if it includes employee members, to use its existing grievance committee to hear performance pay disputes. Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-34, performance pay disputes, including disputes about individual performance appraisals, shall not be considered contested case issues.

- (8) The State Personnel Director shall monitor the performance appraisal system and performance increase distribution of each employing unit within each department, agency, and institution. Each department, agency, and institution shall submit to the Director annual reports which shall include data on the demographics of performance ratings, the frequency of evaluations, the performance pay increases awarded, and the implementation schedule for performance pay increases. The Director shall analyze the data to ensure that performance increases are distributed fairly within each department, agency, and institution and across all departments, agencies, and institutions of State government and shall report back to each department, agency, and institution on its appraisal and distribution performance.
- (9) The State Personnel Director shall report annually on the performance pay program to the Commission. The report shall evaluate the performance of each department, agency, and institution in the administration of its appraisal system and the distribution of performance increases within each department, agency, and institution and across State government. The report shall include recommendations for improving the performance appraisal system and alleviating inequities. Copies of the report shall be sent to the State Auditor.
- (10) The Commission shall report annually to the Governor, the Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Standing Personnel Committees of the House and the Senate. The Commission report shall include an evaluation

of the administration of the appraisal system and distribution of performance increases by each department, agency, and institution. The State Personnel Director shall recommend to the General Assembly for its approval sanctions to be levied against departments, agencies, and institutions that have deficient appraisal systems or that do not link performance increases to performance. These sanctions may include withholding performance increases from the managers and supervisors of individual employing units of departments, agencies, and institutions in which discrepancies exist.

(d) The provisions of subsections (a), (b), and (c) shall not affect the system of longevity payments established by the State Personnel Commission.

~~(e) Nothing in this section shall require or authorize any department, agency, or institution to establish a limitation on the number or percentage of employees who are eligible under this section to receive performance increases."~~

Sec. 2. G.S. 126-35 reads as rewritten:

"§ 126-35. *Written statement of reason for disciplinary action.*

(a) No permanent employee subject to the State Personnel Act shall be discharged, suspended, or reduced in pay or position, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. A copy of the written statement given the employee and the employee's appeal shall be filed by the department with the State Personnel Director within five days of their delivery. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the State Personnel Commission. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision.

(b) Notwithstanding any other provision of this Chapter, a reduction in pay or position which is not imposed for disciplinary reasons shall not be considered a disciplinary action within the meaning of this Article. Disciplinary actions, for the purpose of this

Article, are those actions taken in accordance with the disciplinary procedures adopted by the State Personnel Commission and specifically based on unsatisfactory job performance, unacceptable personal conduct or a combination of the two.

(c) For the purposes of contested case hearings under Chapter 150B, an involuntary separation (such as a separation due to a reduction in force) shall be treated in the same fashion as if it were a disciplinary action."

Sec. 3. G.S. 126-37 reads as rewritten:

~~"§ 126-37. Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding review Administrative Law Judge's recommended decision and make final decision.~~

(a) ~~The State Personnel Director or any other person or persons designated by the Commission shall investigate the disciplinary action or alleged discrimination which is appealed to the Commission.~~ Appeals involving a disciplinary action, alleged discrimination, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36. The State Personnel Commission is hereby authorized to reinstate any employee to the position from which he has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority. The decisions of the State Personnel Commission shall be binding in appeals of local employees subject to this Chapter if the Commission finds that the employee has been subjected to discrimination prohibited by Article 6 of this Chapter or in any case where a binding decision is required by applicable federal standards. However, in all other local employee appeals, the decisions of the State Personnel Commission shall be advisory to the local appointing authority.

(b) An action brought in superior court by an employee who is dissatisfied with an advisory decision of the State Personnel Commission or with the action taken by the local appointing authority pursuant to the decision shall be heard upon the record and not as a trial *de novo*. In such an action brought by a local employee under this section, the defendant shall be the local appointing authority. If superior court affirms the decision of the Commission, the decision of superior court shall be binding on the local appointing authority.

(c) If the local appointing authority is other than a board of county commissioners, the employee must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the filing of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene."

Sec. 4. G.S. 126-38 reads as rewritten:

"§ 126-38. *Time limit for appeals.*

Any employee appealing any decision or action ~~to the Commission~~ shall file a ~~written statement of appeal with the Commission or its designate~~ petition for a contested case with the Office of Administrative Hearings as provided in G.S. 150B-23(a) no later than 30 days after receipt of notice of the decision or action which triggers the right of appeal."

Sec. 5. Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act and any funds allocated under this act shall come from the performance pay previously appropriated.

Sec. 6. Section 2 of this act is effective upon ratification and shall apply to affected personnel actions effective on or after the date of ratification. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 1375

CHAPTER 1026

AN ACT AMENDING CHAPTER 296 OF THE PUBLIC-LOCAL LAWS OF 1939, AS AMENDED.

The General Assembly of North Carolina enacts:

Section 1. The provisions at the end of Section 5 of Chapter 296 of the Public-Local Laws of 1939, as added to such section by Chapter 721 of the Session Laws of 1959, and as amended by Chapter 565 of the Session Laws of 1965, and as rewritten by Chapter 397, Session Laws of 1969, reads as rewritten:

"The City of Winston-Salem, or any governing body, agency, insurance company, person or other corporation contracting with the City of Winston-Salem for the investment, care or administration of said fund may invest and reinvest the funds constituting the said fund

~~in one or more of the types of securities or other investments authorized by State law for the State Treasurer in G.S. 147-69.2. Section 58-79 of the General Statutes of North Carolina, as heretofore or hereafter amended, and by other State law, for the investment of assets of domestic life insurance companies; provided, the provision of Section 58-79(a)(6) prohibiting the investment of more than ten per cent (10%) of the total admitting assets of said fund in common stocks shall not apply; the investment or reinvestment of not more than fifty per cent (50%) of the assets of said fund in common stocks being hereby authorized; and provided further, that the foregoing limitation and the limitation of Section 58-79(a)(6) prohibiting the investment of more than three per cent (3%) of the admitted assets of said fund in the stock or shares of any one corporation, shall be construed as limitations determined at the time of investment on the basis of the cost of such assets and the cost of such stocks or shares."~~

Sec. 1.1. This act, insofar as it authorizes certain investments, amends G.S. 159-30 with regard to the investment of the Winston-Salem Policemen's Retirement Fund only.

Sec. 2. All laws and clauses of laws in conflict herewith are repealed.

Sec. 3. All actions heretofore taken, consistent with this act, are hereby ratified.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 1380

CHAPTER 1027

AN ACT TO PROVIDE FOR A STRAWBERRY ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 65.

"Strawberry Assessment Act.

" § 106-781. Title.

This Article shall be known as the 'Strawberry Assessment Act.'

" § 106-782. Findings and purpose.

The General Assembly hereby finds that strawberry production makes an important contribution to the State's economy; and that it is appropriate for the State to provide a means whereby strawberry producers may voluntarily assess themselves in order to provide funds for strawberry research and marketing.

" § 106-783. Definitions.

As used in this Article:

- (1) 'Association' means the North Carolina Strawberry Association, Inc.
- (2) 'Commercial production' means the production of strawberries for sale.
- (3) 'Department' means the North Carolina Department of Agriculture.

" § 106-784. Referendum.

(a) At any time after the effective date of this Article, the Association may conduct a referendum among strawberry producers upon the question of whether an assessment shall be levied as provided for herein.

(b) The Association shall determine:

- (1) The amount of the proposed assessment;
- (2) The period for which the assessment shall be levied, not to exceed three years;
- (3) The time and place of the referendum;
- (4) Procedures for conducting the referendum and counting of votes; and
- (5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot; provided that no annual assessment shall exceed five percent (5%) of the value of the previous year's strawberry plant sales.

(d) All persons engaged in the commercial production of strawberries, including owners of farms, tenants and sharecroppers shall be eligible to vote in the referendum. Any questions concerning eligibility to vote shall be resolved by the Board of Directors of the Association.

" § 106-785. Two-thirds vote required; collection of assessment.

(a) The assessment shall not be collected unless at least two-thirds of the votes cast in the referendum are in favor of the assessment. If at least two-thirds of the votes cast in the referendum are in favor of the assessment, then the Department shall notify all strawberry plant growers of the assessment. The assessment shall be added by plant growers to the price of all strawberry plants sold for planting in North Carolina and shall be remitted to the Department no later than the 10th day following the end of each calendar quarter. The Department shall provide forms to plant growers for reporting the assessment. Persons who purchase strawberry plants for commercial production on which the assessment has not been collected by the seller shall report such purchases and pay the assessment to the Department.

(b) The Association may bring an action against any plant grower who fails to pay the assessment to collect unpaid assessments, and if

successful shall also recover the cost of such action, including attorney's fees.

" § 106-786. Use of funds; refunds.

The Department shall remit all funds collected under this Article to the Association at least monthly.

The Association shall use such funds for research and marketing related to strawberries including such administrative expenses as may be reasonably necessary to carry out this function. A funding committee composed of seven members of the Association appointed by the Commissioner of Agriculture, shall approve all expenditures of such funds. Funding committee members may be reimbursed for necessary expenses as determined by the Association's Board of Directors.

Any person who has purchased strawberry plants upon which the assessment has been paid shall have the right to receive a refund of the assessment by making demand in writing to the Association within 30 days of purchase of the plants. Such demand must be accompanied by proof of purchase satisfactory to the funding committee."

Sec. 1.1. G.S. 106-550 reads as rewritten:

" § 106-550. Policy as to promotion of use of, and markets for, farm products; tobacco excluded. products.

It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, swine, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the agricultural product of tobacco, products of tobacco, strawberries, or strawberry plants, with respect to which a separate provision and enactment has heretofore provisions have been made."

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

DEPARTMENT, AGENCY, AND INSTITUTION TO ENSURE THAT PERFORMANCE PAY INCREASES ARE MADE IN A FAIR AND EQUITABLE MANNER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-7(c) reads as rewritten:

"(c) Performance increases shall be based on performance appraisals of all employees conducted by each department, agency, and institution. The State Personnel Commission, under the authority of G.S. 126-4(8), shall adopt policy and regulations for performance appraisal. The policy and regulations shall include the following:

- (1) The performance appraisal system of each department, agency, or institution shall be designed and administered to ensure that performance increases are distributed fairly and reward only performance that exceeds performance requirements.
- (2) To be eligible to distribute its share of the performance increase allocation, a department, agency, or institution shall have an operative performance appraisal system which has been approved by the State Personnel Director. The performance appraisal system adopted shall use a rating scale of at least five levels, with the top three levels qualifying for performance increases, and shall adhere to modern personnel management techniques and practices in common use in the public and private sectors. Departments, agencies, and institutions with existing performance appraisal systems which use a rating scale which is not consistent with the five-level system described above shall have until July 1, 1991, to bring their systems into compliance with this subsection.
- (3) The State Personnel Director shall help departments, agencies, and institutions to establish and administer their performance appraisal systems and shall provide initial and ongoing training in performance appraisal and performance system administration.
- (4) An employee whose performance exceeds performance requirements shall receive a performance increase unless the employee's supervisor justifies in writing the decision not to award the performance increase. An employee whose performance does not exceed performance requirements shall not receive a performance increase.
- (5) The State Personnel Director shall set the performance increase ranges allowable for levels of performance that exceed performance requirements. Absent the supervisor's

written justification, an employee whose performance exceeds expectations shall receive a percentage increase equal to the midrange value for his rating level. With the supervisor's written justification, an individual employee's increase may vary above or below the midrange value within the allowable range. A supervisor's performance appraisal plan, evaluation standards for each employee, and individual employee ratings and recommended performance increase amounts, with justification, shall be reviewed and approved by that supervisor's next higher level supervisor.

- (6) The State Personnel Director may suspend any performance increase that does not appear to meet the intent of the provisions of the performance pay system and require the originating department, agency, or institution to reconsider or justify the increase.
- (7) An employee who disputes the fairness of his performance evaluation or the sufficiency of the increase awarded or who believes that he was unfairly denied a performance increase shall first discuss the problem with his supervisor. Appeals of the supervisor's decision shall be made only to the grievance committee or internal performance review board of the department, agency, or institution which shall make a recommendation to the head of the department, agency, or institution for final decision. The State Personnel Director shall help a department, agency, or institution establish an internal performance review board or, if it includes employee members, to use its existing grievance committee to hear performance pay disputes. Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-34, performance pay disputes, including disputes about individual performance appraisals, shall not be considered contested case issues.
- (7a) Each department, agency, and institution shall establish a performance management and pay advisory committee as part of the performance appraisal system. The purpose of the committee is to ensure that performance pay increases are made in an equitable manner. The committee shall be responsible for reviewing:
 - a. Agency performance pay policies and performance pay plan to determine whether this section and any guidelines promulgated by the Office of State Personnel have been adhered to:

- b. Agency training and education programs to determine whether all employees receive appropriate information; and
- c. Performance ratings within the department, agency, or institution to determine whether an equitable distribution has been made.

The committee must have a minimum of five members. The head of each department, agency, and institution shall appoint the members of the committee with equal representation of nonsupervisory, supervisory, and management employees. The committee shall elect its own chair.

The performance management and pay advisory committee shall meet at least two times each year. The committee shall submit a written report following each meeting to the head of the department, agency, or institution. The report shall include recommendations for changes and corrections in the administration of the performance management system. The recommendations of the committee shall be advisory only. The head of the department, agency, or institution shall respond to the committee within three months. Copies of the report shall be included in the report to the Office of State Personnel that is required of that agency, department, or institution. Summaries of the report shall be included in the annual reports that are mandated by this subsection.

- d. Nothing in section (7a) and each subpart hereof shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act.
- (8) The State Personnel Director shall monitor the performance appraisal system and performance increase distribution of each employing unit within each department, agency, and institution. Each department, agency, and institution shall submit to the Director annual reports which shall include data on the demographics of performance ratings, the frequency of evaluations, the performance pay increases awarded, and the implementation schedule for performance pay increases. The Director shall analyze the data to ensure that performance increases are distributed fairly within each department, agency, and institution and across all departments, agencies, and institutions of State government and shall report back to each department.

agency, and institution on its appraisal and distribution performance.

- (9) The State Personnel Director shall report annually on the performance pay program to the Commission. The report shall evaluate the performance of each department, agency, and institution in the administration of its appraisal system and the distribution of performance increases within each department, agency, and institution and across State government. The report shall include recommendations for improving the performance appraisal system and alleviating inequities. Copies of the report shall be sent to the State Auditor.
- (10) The Commission shall report annually to the Governor, the Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Standing Personnel Committees of the House and the Senate. The Commission report shall include an evaluation of the administration of the appraisal system and distribution of performance increases by each department, agency, and institution. The State Personnel Director shall recommend to the General Assembly for its approval sanctions to be levied against departments, agencies, and institutions that have deficient appraisal systems or that do not link performance increases to performance. These sanctions may include withholding performance increases from the managers and supervisors of individual employing units of departments, agencies, and institutions in which discrepancies exist."

Sec. 2. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 1467

CHAPTER 1029

AN ACT TO INCREASE THE FEES THAT MAY BE CHARGED BY THE STATE BOARD OF BARBER EXAMINERS AND THE STATE BOARD OF EXAMINERS OF PRACTICING PSYCHOLOGISTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 86A-25 reads as rewritten:

"§ 86A-25. *Fees collectible by Board.*

The State Board of Barber Examiners shall charge fees not to exceed the following:

Certificate of registration or renewal as a barber	\$20.00	<u>30.00</u>
Certificate of registration or renewal as an apprentice barber	20.00	<u>30.00</u>
Barbershop permit or renewal	20.00	<u>30.00</u>
Examination to become a registered barber	40.00	<u>50.00</u>
Examination to become a registered apprentice barber	40.00	<u>50.00</u>
Restoration of an expired certificate of a registered apprentice, registered barber or barbershop permit within the first year \$10.00 plus renewal fee; after the first year \$20.00 plus lapsed fees up to 5 years		
Examination to become a barber school instructor	\$85.00	<u>95.00</u>
Student permit	10.00	<u>15.00</u>
Issuance of any duplicate copy of a license, certificate or permit	5.00	<u>7.50</u>
Barber school permit	50.00	<u>75.00</u>
Barber school instructor certificate or renewal	35.00	<u>50.00</u>
Inspection of newly established barbershop	60.00	<u>70.00</u>
Inspection of newly established barber school	100.00	<u>125.00</u>
Issuance of a registered or apprentice certificate by certification	60.00	<u>70.00</u> ".

Sec. 2. G.S. 90-270.14(1) reads as rewritten:

"(1) Each application for renewal must be accompanied by a renewal fee of not more than ~~thirty-five dollars (\$35.00)~~, one hundred twenty-five dollars (\$125.00). If a license is not renewed on or before the first day of January of each year, an additional fee of not more than fifteen dollars (\$15.00) shall be charged for late renewal; and".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 1475

CHAPTER 1030

AN ACT TO SET THE AMOUNTS OF THE FEES COLLECTED FOR PROPRIETARY SCHOOL LICENSURE AND REGULATION.

The General Assembly of North Carolina enacts:

Section 1. (a) Notwithstanding any other provision of law, the fees collected under Article 8 of Chapter 115D of the General Statutes during the 1990-91 fiscal year shall be at the following rates:

- \$750.00 Initial License
- 500.00 Renewal of License
- 100.00 Approval of New or Revised Program
- 200.00 Site Visitation.

(b) The fees collected shall be deposited and used as provided in G.S. 115D-92.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 1506

CHAPTER 1031

AN ACT TO ALLOW JUDGES TO USE HOUSE ARREST AS A CONDITION OF SPECIAL PROBATION IN CERTAIN DWI CASES, AND TO PROVIDE THAT CERTAIN MISDEMEANANTS MAY BE PAROLED AND PLACED UNDER HOUSE ARREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to two thousand dollars (\$2,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 14 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least 14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge must, if required by subsection (m), impose the conditions relating to assessment, treatment, and education described in that subsection. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so."

Sec. 2. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to one thousand dollars (\$1,000) and

must be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least seven days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge must, if required by subsection (m), impose the conditions relating to assessment, treatment, and education described in that subsection. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so."

Sec. 3. G.S. 15A-1372(d) reads as rewritten:

"(d) Parole and Terminate. -- The Parole Commission is authorized simultaneously to parole and terminate supervision of a prisoner when such prisoner has less than 180 days remaining on his maximum sentence, and when the Commission finds that such action will not be incompatible with the public interest. When the Parole Commission finds that such action will not be incompatible with the public interest, the Commission is also ~~authorized simultaneously to parole and terminate supervision of a prisoner when such prisoner is imprisoned only for a misdemeanor, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving,~~ authorized:

- (1) Simultaneously to parole and terminate supervision of a prisoner; or
- (2) To parole a prisoner on the condition that he be placed under house arrest;

when the prisoner is imprisoned only for a misdemeanor, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving."

Sec. 4. Sections 1 and 2 of this act shall become effective October 1, 1990, and shall apply to convictions occurring on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

AN ACT TO EXTEND COVERAGE UNDER THE DISABILITY INCOME PLAN OF NORTH CAROLINA TO PARTICIPANTS WHO ARE ON AN EMPLOYER APPROVED LEAVE OF ABSENCE AND IN RECEIPT OF WORKERS' COMPENSATION BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-105(a) reads as rewritten:

"(a) Any participant who becomes disabled and is no longer able to perform his usual occupation may, after at least 365 calendar days succeeding his date of initial employment as a teacher or employee and at least one year of contributing membership service, receive a benefit commencing on the first day succeeding the waiting period; provided that the participant's employer and attending physician shall certify that such participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter; provided further that the requirement for one year of contributing membership service must have been earned within 36 calendar months immediately preceding the date of disability and further, salary continuation used during the period as provided in G.S. 135-104 shall count toward the aforementioned one year requirement.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article."

Sec. 2. G.S. 135-106(a) reads as rewritten:

"(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases or after salary continuation payments cease, whichever is later; Provided, that the Medical Board shall certify that such beneficiary or participant is mentally or physically incapacitated for the further performance of

duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent: Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article."

Sec. 3. This act is effective upon ratification and applies to any participant in the Disability Income Plan of North Carolina who becomes disabled on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 1624

CHAPTER 1033

AN ACT TO REQUIRE PEOPLE TO BE LICENSED TO PRACTICE ELECTROLOGY.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 88A.

"Electrolysis Practice Act.

" § 88A-1. Short title.

This act may be cited as the 'Electrolysis Practice Act.'

" § 88A-2. Purpose.

The purpose of this Chapter is to ensure minimum standards of competency, to protect the public from misrepresentation of status by persons who hold themselves out to be 'certified electrologists', and to provide the public with safe care by the mandatory licensing of electrologists.

" § 88A-3. Definitions.

As used in this Chapter, unless the context requires otherwise:

- (1) 'Board' means the North Carolina Board of Electrolysis Examiners.
- (2) 'Electrolysis' means the permanent removal of hair by the application of an electrical current to the dermal papilla by a filament to cause decomposition, coagulation, or dehydration within the hair follicle as approved by the Food and Drug Administration of the United States Government.
- (3) 'Electrologist' or 'electrolocist' means a person who engages in the practice of electrolysis for permanent hair removal.
- (4) 'Electrology' means the art and practice relating to the removal of hair from the normal skin of the human body by application of an electric current to the hair papilla by means of a needle or needles so as to cause growth inactivity of the hair papilla and thus permanently remove the hair.

" § 88A-4. Unlawful practice.

(a) Effective January 1, 1992, it shall be unlawful to engage in the practice of electrolysis in this State without a license.

(b) Any violation of this Chapter shall be a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00), or imprisonment for not more than 60 days, or both.

" § 88A-5. Creation and membership of Board.

(a) The North Carolina Board of Electrolysis Examiners is created. The Board shall consist of five members as follows:

- (1) Three electrologists who have engaged in the practice of electrolysis for at least five years, one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and one of whom shall be appointed by the Governor.
- (2) A physician licensed under Chapter 90 of the General Statutes, who shall be nominated by the North Carolina Board of Medical Examiners and appointed by the Governor.
- (3) A public member, appointed by the Governor, who has not practiced electrolysis, who is not in training to become an electrologist, and who is not related to anyone who would be prohibited by this subdivision from serving on the Board as a public member.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member shall be appointed for a term of three years and shall serve until a successor is appointed. Of the members initially appointed, one of the electrologist members shall serve a term of one year. The public member and the second electrologist member shall serve a term of two years. The physician member and the third electrologist member shall serve a term of three years. The terms of all initial appointments shall commence within 30 days of the effective date of this act. No member may serve more than two consecutive full terms.

(d) Vacancies shall be filled by the appropriate appointing authority within 30 days after the position is vacated. Appointees shall serve the remainder of the unexpired term and until their successors have been appointed and qualified.

(e) The Board may remove any of its members for gross neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from all Board business until the charges are resolved. The Governor may also remove any member of the Board which he appoints.

(f) Each member of the Board shall receive per diem compensation and reimbursement for travel and subsistence in the amounts the Board votes upon and records in its minutes, provided the amounts do not exceed the amounts specified in G.S. 93B-5.

(g) The Board shall elect a Chairman, a Vice-Chairman, a Treasurer, and such other officers as are deemed necessary by the Board. All officers shall be elected annually by the Board for one-

year terms and shall serve until their successors are elected and qualified.

(h) The Board shall hold at least two meetings each year to conduct its business, and shall adopt rules governing the calling, holding, and conducting of regular and special meetings. A majority of the members shall constitute a quorum.

" § 88A-6. Powers and duties of the Board.

The Board shall have the following general powers and duties:

- (1) To administer and interpret this Chapter;
- (2) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes as may be necessary to carry out the provisions of this Chapter;
- (3) To determine the qualifications of persons who are licensed or certified pursuant to this Chapter;
- (4) To issue, renew, deny, restrict, suspend, or revoke licenses and to carry out any of the other actions authorized by this Chapter;
- (5) To establish, publish, and enforce rules of professional conduct, and to regulate advertising by licensees;
- (6) To maintain a record of all proceedings and make available to persons licensed under this Chapter, and to other concerned parties, an annual report of all Board action;
- (7) To collect fees for licensure, licensure renewal, and other services deemed necessary to carry out the purpose of this Chapter;
- (8) To employ and fix the compensation of personnel, including an executive director, that the Board determines are necessary to carry out the provisions of this Chapter and to incur other expenses necessary to effectuate this Chapter;
- (9) To conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining persons licensed or certified under this Chapter exist; and,
- (10) To adopt a seal containing the name of the Board for use on all certificates, licenses, and official reports issued by it.

" § 88A-7. Custody and use of funds.

The Treasurer or the Executive Director shall deposit all fees payable to the Board in financial institutions designated by the Board as official depositories. The funds shall be deposited in the name of the Board and shall be used to pay all expenses incurred by the Board in carrying out the purposes of this Chapter. The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes.

" § 88A-8. The Board may accept contributions, etc.

The Board may accept grants, contributions, devises, bequests, and gifts that shall be kept in the same account as the funds deposited in accordance with G.S. 88A-7 and shall be used to carry out the provisions of this Chapter.

"§ 88A-9. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed for the purpose of carrying out the purposes of this Chapter shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Chapter, or funds received pursuant to G.S. 88A-7. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its officers or employees may incur any expense, debt, or other financial obligation binding upon the State.

(b) All fees may be calculated by the Board in amounts sufficient to pay the costs of administration of this act, but in no event may they exceed the following:

<u>(1) Application for licensure as an electrologist</u>	<u>\$150.00</u>
<u>(2) Licensure of electrology renewal</u>	<u>100.00</u>
<u>(3) Application for certification as an electrology instructor</u>	<u>150.00</u>
<u>(4) Certificate of electrology instructor renewal</u>	<u>40.00</u>
<u>(5) Application for certification as a Board approved school of electrology</u>	<u>500.00</u>
<u>(6) Certificate of Board approved school of electrology renewal</u>	<u>250.00</u>
<u>(7) Late renewal charge</u>	<u>25.00</u>
<u>(8) Reinstatement of expired license</u>	<u>150.00.</u>

" § 88A-10. Requirements for licensure as an electrologist.

(a) Any person who desires to be licensed as an 'electrologist' pursuant to this Chapter shall:

- (1) Submit an application on a form approved by the Board;
- (2) Be a resident of North Carolina;
- (3) Be 18 years of age or older;
- (4) Provide proof of graduation from a school certified by the Board pursuant to G.S. 88A-18; and,
- (5) Pass a written examination given by the Board.

(b) At least twice each year, the Board shall give an examination to applicants for licensure to determine the applicants' knowledge of the basic and clinical sciences relating to the theory and practice of

electrology. The Board shall give applicants notice of the date, time, and place of the examination at least 60 days in advance.

(c) When the Board determines that an applicant has met all the qualifications for licensure, and has submitted the required fee, the Board shall issue a license to the applicant.

"§ 88A-11. Licensure without examination.

The Board may issue a license to practice electrology, without examination, to an applicant:

- (1) Who has been engaged in the practice of electrolysis prior to January 1, 1992, and who submits an application for licensure to the Board before December 31, 1991.
- (2) Who is certified or licensed in good standing to practice electrolysis in another state or other jurisdiction if the other state or jurisdiction grants a similar exclusion to an applicant from North Carolina who applies to practice electrology in that state or jurisdiction.

"§ 88A-12. License renewal.

(a) Every license issued pursuant to this Chapter must be renewed annually. On or before the date the current license expires, a person who desires to continue to practice electrology shall apply for license renewal to the Board on forms approved by the Board, provide evidence of the successful completion of a continuing educational program approved by the Board, meet the criteria for renewal established by the Board, and pay the required fee. The Board may provide for the late renewal of licensure upon payment of a late fee as set by the Board, but late renewal may not be granted more than 90 days after expiration of the license.

(b) Any person who has failed to renew his license for more than 90 days after expiration may have it reinstated by applying to the Board for reinstatement on a form approved by the Board, furnishing a statement of the reason for failure to apply for renewal prior to the deadline, and paying the required fee. The Board may require evidence of competency to resume practice before reinstating the applicant's license.

"§ 88A-13. Continuing education.

(a) The Board shall determine the number of hours and subject matter of continuing education required as a condition of license renewal. The Board may offer continuing education to the licensees under this act.

(b) Upon request, the Board may grant approval to a continuing education program or course upon finding that the program or course offers an educational experience designed to enhance the practice of electrology.

(c) The Board shall maintain and distribute, as appropriate, records of the educational course work successfully completed by each licensee, including the subject matter and the number of hours of each course.

" § 88A-14. Inactive list.

Upon request by a licensee for inactive status, the Board shall place the licensee's name on the inactive list. While on the inactive list, the person shall not be subjected to renewal requirements and shall not practice electrology in North Carolina. When that person desires to be removed from the inactive list and returned to an active list, an application shall be submitted to the Board on a form furnished by the Board and the fee shall be paid for license renewal. The Board may require evidence of competency to resume practice before returning the applicant to the active status. Any person whose license has lapsed or expired for a period of five years or more shall be required to take and pass the examination for licensure before the license can be renewed.

" § 88A-15. Exemptions from licensure.

The following individuals shall be permitted to practice electrology without a license:

- (1) Any physician licensed in accordance with Article 1 and Article 11 of Chapter 90 of the General Statutes.
- (2) A student at an approved school of electrology when electrolysis is performed in the course of study.
- (3) A person demonstrating on behalf of a manufacturer or distributor any electrolysis equipment or supplies, if such demonstration is performed without charge.

" § 88A-16. Permanent establishment required.

(a) Electrolysis shall be practiced by a licensed person only in a permanent establishment, hereafter referred to as an office. The Board may adopt reasonable rules and regulations concerning the sanitation standards, equipment, and supplies to be used and observed in offices. Offices shall be subject to periodic inspection at any time during business hours by members of the Board or its agents or assistants.

(b) Every electrologist shall notify the Board in writing 30 business days prior to, but no later than 10 business days after, any change of address or opening of a new office.

(c) Every electrologist shall display his license in a conspicuous place in the office.

(d) Every electrologist may make calls outside the office. The Board shall adopt rules and regulations concerning the equipment and instruments to be used by an electrologist when treating patients outside the office.

" § 88A-17. Requirements for certification as an electrology instructor.

(a) Any person who desires to be certified as an 'electrology instructor' pursuant to this Chapter shall:

- (1) Submit an application on a form approved by the Board;
- (2) Be a licensed electrologist;
- (3) Have practiced electrology actively for at least five years immediately before the application; and,
- (4) Pass a written examination given by the Board.

(b) At least twice each year, the Board shall give an examination to applicants for certification as an electrology instructor. The examination shall consist of written and verbal sections testing the applicants' knowledge of the basic and clinical sciences relating to the theory and practice of electrology. The Board shall give applicants notice of the date, time, and place of the examination at least 60 days in advance.

(c) When the Board determines that an applicant has met all the qualifications for certification as an electrology instructor, and has submitted the required fee, the Board shall issue an instructor's certificate to the applicant.

" § 88A-18. Renewal of instructor's certificate.

An instructor's certificate shall be renewed annually. On or before the date the current certificate expires, the applicant must submit an application for renewal of certification on a form approved by the Board, meet criteria for renewal established by the Board, and pay the required fee. Any person whose instructor's certificate has expired for a period of five years or more shall be required to take and pass the instructor's examination before the certificate can be renewed.

" § 88A-19. Requirements for certification as a Board approved school of electrology.

(a) Any school that desires to be certified as a Board approved school of electrology shall:

- (1) Submit an application on a form approved by the Board;
- (2) Submit a detailed projected floor plan of the institutional area demonstrating adequate school facilities to accommodate students for purposes of lectures, classroom instruction, and practical demonstration;
- (3) Submit a detailed list of the equipment to be used by the students in the practical course of their studies;
- (4) Submit a copy of the planned electrology curriculum consisting of the number of hours and subject matter determined by the Board, provided that the number of hours required shall not be less than 120 hours and not more than 600 hours;
- (5) Submit a certified copy of the school manual of instruction;

(6) Submit the names and qualifications of the instructors certified in accordance with G.S. 88A-16; and,

(7) Any additional information the Board may require.

(b) When the Board determines that an applicant has met all the qualifications for certification as a Board approved school of electrolysis, and has submitted the required fee, the Board shall issue a certificate to the applicant.

(c) A school's certification is only valid for the location named in the application. When a school desires to change locations, an application shall be submitted to the Board on a form furnished by the Board and the fee shall be paid for certificate renewal.

(d) A school's certification is not transferrable. Schools must immediately notify the Board in writing of any sale, transfer, or change in ownership or management.

(e) Every school shall display its certification in a manner prescribed by the Board.

(f) All epilators used in the school must be approved by the Food and Drug Administration of the United States Government.

" § 88A-20. Certification renewal.

Every certificate issued pursuant to G.S. 88A-19 shall be renewed annually. On or before the date the current certificate expires, the applicant must submit an application for renewal of certification on a form approved by the Board, meet criteria for renewal established by the Board, and pay the required fee. Failure to renew the certificate within 90 days after the expiration date shall result in automatic forfeiture of any certification issued pursuant to this Chapter.

" § 88A-21. Disciplinary authority of the Board.

(a) Grounds for disciplinary action shall include:

(1) Conviction of, or finding of guilt with respect to, a crime in this State or any other jurisdiction, regardless of adjudication, if any element of the crime directly relates to the practice of electrolysis;

(2) Obtaining, or attempting to obtain, a license to practice electrolysis by bribery or by fraudulent misrepresentation;

(3) Malpractice or the inability to practice electrolysis with reasonable skill and safety;

(4) Disseminating false, deceptive, or misleading advertising;

(5) Judicial determination of mental incompetency;

(6) The revocation, suspension, or denial of the person's license or certification to practice electrolysis in any other state or territory of the United States;

(7) A finding, upon investigation by the Board, that the applicant or licensee is guilty of unprofessional conduct. 'Unprofessional conduct' includes any act which departs

from, or fails to conform to, the minimum standards of acceptable and prevailing electrolysis practice;

(8) Assisting, aiding, abetting, or procuring the practice of a person who is not licensed under this Chapter; and,

(9) Violation of any provision of this Chapter, or any rule or regulation of the Board.

(b) In accordance with Chapter 150B of the General Statutes, the Board may require remedial education, issue a letter of reprimand, restrict, revoke, or suspend any license or certification issued pursuant to this Chapter or deny any application for licensure or certification if the Board determines that the applicant or licensee has committed any of the acts listed in subsection (a).

(c) The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the person can reasonably be expected to practice electrology safely and properly.

" § 88A-22. Enjoining illegal practices.

(a) If the Board finds that any person is violating any of the provisions of this Chapter, it may apply in its own name to the superior court for an injunction or restraining order to prevent that person from further violation. The court is empowered to grant an injunction regardless of whether any other enforcement action has been or may be instituted. All actions by the Board shall be governed by the North Carolina Rules of Civil Procedure.

(b) The venue for actions brought under this Chapter shall be the superior court in the county where the illegal or unlawful acts are alleged to have been committed, in the county where the defendant resides, or in the county where the Board maintains its offices and records.

" § 88A-23. Reports and immunity from suit.

Any person who has reasonable cause to suspect misconduct or incapacity of a licensee, or who has reasonable cause to suspect that any person is in violation of this Chapter, shall report the relevant facts to the Board. Upon the receipt of such charge, or upon its on initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. Any person making a report pursuant to this section shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 2173

CHAPTER 1034

AN ACT TO INCREASE THE PROBATION AND PAROLE SUPERVISION FEES FROM FIFTEEN TO TWENTY DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1343(c1) reads as rewritten:

"(c1) Supervision Fee. -- Any person placed on supervised probation pursuant to subsection (a) shall pay a supervision fee of ~~fifteen dollars (\$15.00)~~ twenty dollars (\$20.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

Sec. 2. G.S. 15A-1374(c) reads as rewritten:

"(c) Supervision Fee. -- The Commission must require as a condition of parole that the parolee pay a supervision fee of ~~fifteen dollars (\$15.00)~~ twenty dollars (\$20.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court ~~designated by the Commission~~ of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the General Fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

Sec. 3. This act shall become effective October 1, 1990, and shall apply to all persons on supervised probation or parole prior to that date and to all persons placed on supervised probation or parole on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 2234

CHAPTER 1035

AN ACT TO PROVIDE FOR FOUR-YEAR STAGGERED TERMS
FOR THE BOARD OF COMMISSIONERS OF THE TOWN OF
RED OAK.*The General Assembly of North Carolina enacts:*

Section 1. Section 4 of Chapter 799, Session Laws of 1961, as amended by Chapter 212, Session Laws of 1977, reads as rewritten:

"Sec. 4. Municipal Elections. The regular municipal election in the Town of Red Oak shall be held, ~~beginning on the Tuesday after the first Monday in November 1977, and every four years thereafter, by the county board of elections,~~ in accordance with G.S. 163-279(a)(1), and the applicable provisions of Article 23 and 24 of Chapter 163 of the General Statutes. The Mayor shall be elected in 1993 and quadrennially thereafter for a four-year term. In 1991 and quadrennially thereafter, two members of the board of commissioners shall be elected for four-year terms. In 1993 and quadrennially thereafter, two members of the board of commissioners shall be elected for four-year terms. All municipal elections shall be conducted in accordance with the general law of the State relating to municipal elections. Provided, however, that any qualified elector of the Town of Red Oak may become a candidate for the office of mayor or board of commissioners by filing a written notice with the mayor or other person designated by the governing body not later than ten (10) days prior to the date fixed for the election, and by the payment of a filing fee, the amount of which shall be fixed by the board of commissioners, not to exceed five dollars (\$5.00)."

Sec. 2. The terms of office of Walter Faulkner and Elizabeth W. Griffin on the Board of Commissioners of the Town of Red Oak shall expire December 1, 1991. The terms of office of Barbara High and Billy Short on the Board of Commissioners of the Town of Red Oak shall expire December 1, 1993. The term of office of Agnes Moore as Mayor of the Town of Red Oak shall expire December 1, 1993.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 2249

CHAPTER 1036

AN ACT TO CONSOLIDATE AND CLARIFY THE CIVIL
PENALTY POWERS OF THE ENVIRONMENTAL
MANAGEMENT COMMISSION AND TO ESTABLISH

PROCEDURES FOR THE REMISSION OF CIVIL PENALTY ASSESSMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-282 reads as rewritten:

" § 143B-282. *Environmental Management Commission -- creation; powers and duties.*

There is hereby created the Environmental Management Commission of the Department of Environment, Health, and Natural Resources with the power and duty to promulgate rules ~~and regulations~~ to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have the following powers and duties:

- a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution;
- b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been established;
- c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. 143-215.108(b)(5);
- d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. 143-215.3;
- e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. 143-215.3;
- f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. 143-215.111;
- g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. 143-215.112;
- h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. 143-215.112;

- i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. 143-215.3;
 - j. To render advice and assistance to local government regarding floodways pursuant to G.S. 143-215.56;
 - k. To declare and delineate and modify capacity use areas pursuant to G.S. 143-215.13;
 - l. To grant permits for water use within capacity use areas pursuant to G.S. 143-215.15;
 - m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. 143-215.19;
 - n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. 143-215.29;
 - o. To halt dam construction pursuant to G.S. 143-215.29;
 - p. To grant final approval of dam construction work pursuant to G.S. 143-215.30;
 - q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. 143-215.31;
 - r. To direct the inspection of dams pursuant to G.S. 143-215.32;
 - s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107; and
 - t. To have jurisdiction and supervision over oil pollution pursuant to Article 21A of Chapter 143.
- (2) The Environmental Management Commission shall adopt rules:
- a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107;
 - b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215;
 - c. To implement water and air quality reporting pursuant to G.S. 143-215.68;
 - d. To be applied in capacity use areas pursuant to G.S. 143-215.14;
 - e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.20;
 - f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25, 1983;

- g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.
 - h. Governing underground tanks used for the storage of hazardous substances or oil pursuant to Article 21 or Article 21A of Chapter 143 of the General Statutes.
- (3) The Commission is authorized ~~and empowered~~ to make such ~~rules and regulations, rules,~~ not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for water and air resources purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.
 - (4) The Commission shall make rules ~~and regulations~~ consistent with the provisions of this Chapter. All rules ~~and regulations~~ adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.
 - (5) The Environmental Management Commission shall have the power to adopt ~~regulations~~ rules with respect to any State laws administered under its jurisdiction so as to accept evidence of compliance with corresponding federal law or regulation in lieu of a State permit, or otherwise modify a requirement for a State permit, upon findings by the Commission, and after public hearings, that there are:
 - a. Similar and corresponding or more restrictive federal laws or regulations which also require an applicant to obtain a federal permit based upon the same general standards or more restrictive standards as the State laws ~~and regulations~~ rules require; and
 - b. That the enforcement of the State laws and ~~regulations~~ rules would require the applicant to also obtain a State permit in addition to the required federal permit; and
 - c. That the enforcement of the State laws and ~~regulations~~ rules would be a duplication of effort on the part of the applicant; and
 - d. Such duplication of State and federal permit requirements would result in an unreasonable burden not only on the applicant, but also on the citizens and resources of the State."

Sec. 2. Part 4 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-282.1. Environmental Management Commission -- quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Environmental Management Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Environmental Management Commission shall govern such proceedings:

- (1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the chairman of the Commission.
- (2) Oral arguments by the parties may be allowed by the chairman of the Commission upon request of the parties.
- (3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in an executive session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the natural resources of the State arising from the violation of standards or limitations established to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quantity or quality or on air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by noncompliance;
- (6) Whether the violation was committed willfully or intentionally;
- (7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and
- (8) The cost to the State of the enforcement procedures.

(c) The chairman shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the

Committee on Civil Penalty Remissions may hear or vote on any matter in which he has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

- (1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner;
- (2) Whether the violator promptly abated continuing environmental damage resulting from the violation;
- (3) Whether the violation was inadvertent or a result of an accident;
- (4) Whether the violator had been assessed civil penalties for any previous violations;
- (5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations, and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment, Health, and Natural Resources shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) As used in this section, 'Secretary' means the Secretary of Environment, Health, and Natural Resources. The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department of Environment, Health, and Natural Resources."

Sec. 3. G.S. 143-215.6(a) reads as rewritten:

"(a) Civil Penalties. --

- (1) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the ~~Commission~~ Secretary against any person who:
 - a. Violates any classification, standard, ~~limitation~~ limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.
 - b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to

- act in accordance with the terms, conditions, or requirements of such permit.
- c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
 - d. Fails to file, submit, or make available, as the case may be, any documents, ~~data~~ data, or reports required by this Article or G.S. 143-355(k) relating to water use information.
 - e. Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.
 - f. Violates a rule of the Commission implementing this Part or G.S. 143-355(k).
 - g. Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.
- (2) If any action or failure to act for which a penalty may be assessed under this subsection is continuous, the Commission Secretary may assess a penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the violation continues, unless otherwise stipulated.
- (3) In determining the amount of the penalty the Commission Secretary shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.
- (4) The Commission may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Commission may specify, the Commission may institute a

civil action in the superior court of the county in which the violation occurred or, in the discretion of the Commission, in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

- (5) Consistent with G.S. 143B-282.1, A civil penalty of not more than ten thousand dollars (\$10,000) per month may be assessed by the Commission against any local government which fails to adopt or enforce a water supply watershed protection program as required by G.S. 143-214.5. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement.
- (6) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).
- (7) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (6) of this subsection. If any civil penalty has not been paid within 30 days after

the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

- (8) The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department."

Sec. 4. G.S. 143-215.17(b) reads as rewritten:

"(b) Civil Penalties. --

- (1) The ~~Commission~~ Secretary may assess a civil penalty of not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00) against any person who violates any provisions of, or any order issued pursuant to this Part, or who violates a rule of the Commission implementing this Part.
- (2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the ~~Commission~~ Secretary may assess a penalty not to exceed two hundred fifty dollars (\$250.00) per day for each day of violation.
- (3) In determining the amount of the penalty the ~~Commission~~ Secretary shall consider the degree and extent of harm caused by violation, the duration of the violation, the effect on ground or surface water quantity or quality, and whether the violation was intentional or inadvertent factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.
- (4) Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, the Commission may request the Attorney General to institute a civil action in the superior court of the county or counties in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.
- (5) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered

unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

- (6) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.
- (7) The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department."

Sec. 5. G.S. 143-215.36(b) reads as rewritten:

"(b) Civil Penalties. --

- (1) ~~The Commission~~ Secretary may assess a civil penalty of not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00) against any person who violates any provisions of this Part, a rule implementing this Part, or an order issued under this Part.
- (2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the ~~Commission~~ Secretary may assess a penalty not to exceed two hundred fifty dollars (\$250.00) per day for each day of violation.
- (3) In determining the amount of the penalty, the ~~Commission~~ Secretary shall consider the ~~degree and extent of harm caused by the violation and the cost of rectifying the damage.~~

factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

- (4) Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.
- (5) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).
- (6) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.
- (7) The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department."

Sec. 6. G.S. 143-215.91(a) reads as rewritten:

"(a) Civil Penalties. -- Any person who intentionally or negligently discharges oil or other hazardous substances, or knowingly causes or permits the discharge of oil in violation of this Part or fails to report a discharge as required by G.S. 143-215.85 or who fails to comply with the requirements of G.S. 143-215.84(a) or orders issued by the Commission as a result of violations thereof, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for every such violation, the amount to be determined by the ~~Commission~~ Secretary after taking into consideration the gravity of the violation, ~~the previous record of the violator in complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1,~~ factors set out in G.S. 143B-282.1(b), the amount expended by the violator in complying with the provisions of G.S. 143-215.84, and the estimated damages attributed to the violator under G.S. 143-215.90, ~~and such other considerations as the Commission deems appropriate.~~ G.S. 143-215.90. Every act or omission which causes, aids or abets a violation of this section shall be considered a violation under the provisions of this section and subject to the penalty herein provided. The procedures set out in G.S. 143-215.6 and G.S. 143B-282.1 shall apply to civil penalties assessed under this section. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Commission describing the violation with reasonable particularity and advising such person that the penalty is due. A person may contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after receiving notice of the penalty. ~~If a person fails to pay a penalty assessed against him, the Department shall refer the matter to the Attorney General for collection.~~ If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in this subsection, or requests remission of the assessment in whole or in part. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Notification received pursuant to this subsection or information obtained by the exploitation of such

notification shall not be used against any person in any criminal case, except as prosecution for perjury or for giving a false statement."

Sec. 7. G.S. 143-215.102(a) reads as rewritten:

"(a) Civil Penalty. -- Any person who violates any provision of this Part, or any rule, regulation or order made pursuant to this Part, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for every such violation, the amount to be determined by the Commission Secretary after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Article as well as G.S. 143-215.1, and such other considerations as the Commission deems appropriate, factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143-215.6 and G.S. 143B-282.1 shall apply to civil penalties assessed under this section. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Commission describing the violation with reasonable particularity and advising such person that the penalty is due. A person may contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after receiving notice of the penalty. If a person fails to pay a penalty assessed against him, the Department shall refer the matter to the Attorney General for collection. If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment, or requests remission of the assessment in whole or in part as provided in G.S. 143-215.6. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

Any sums recovered under this subsection shall be payable to the Oil Pollution Protection Fund as established by this Article."

Sec. 8. G.S. 143-215.114(a) reads as rewritten:

"(a) Civil Penalties. --

(1) A civil penalty of not more than five thousand dollars (\$5,000) may be assessed by the Secretary against any person who:

a. Violates any classification, standard or limitation established pursuant to G.S. 143-215.107;

- b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit;
 - c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110;
 - d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Article 21 of this Chapter;
 - f. Violates a rule of the Commission or a local governing body implementing this Article.
- (2) Each day of continuing violation after written notification from the ~~Commission~~ Secretary shall be considered a separate offense.
- (3) In determining the amount of the penalty the ~~Commission~~ Secretary shall consider the ~~degree and extent of harm caused by the violation, the cost of rectifying the damage, and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements.~~ factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.
- (4) ~~The Commission, or, if authorized by the Commission, the Department, may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Commission may specify, the Commission may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment. The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.~~
- (5) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of

assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

- (6) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.
- (7) The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department."

Sec. 9. G.S. 143-214.2A(b) reads as rewritten:

"(b) Civil Penalty.

- (1) A civil penalty of not more than twenty-five thousand dollars (\$25,000) may be assessed by the ~~Commission~~ Secretary against any person for a first violation of this section and an additional penalty of twenty-five thousand dollars (\$25,000) may be assessed for each day during which the violation continues. A civil penalty of not more than fifty thousand dollars (\$50,000) may be assessed by the ~~Commission~~ Secretary for a second or further violation and an additional penalty of fifty thousand dollars (\$50,000) may be assessed for each day during which the violation continues.
- (2) ~~The Commission, or its delegate, shall determine the amount of the civil penalty proposed to be assessed under this section and shall notify the person to be assessed of the~~

~~proposed assessment by registered or certified mail. The notice shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. The notice shall further set forth the opportunity for a contested case proceeding under Chapter 150B. The proposed penalty set forth in the notice issued by the Commission, or its delegate, shall become the final civil penalty unless it is increased or decreased by the Commission in the final agency decision of a contested case proceeding requested pursuant to Chapter 150B. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the discharge of waste or the damages to resources occurred or in Wake County if the discharge or resource damage occurs in the open waters of the Atlantic Ocean. In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.~~

- (3) ~~In determining the amount of the penalty, the Commission, or its delegate, shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article. The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.~~
- (4) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary

and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

- (5) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (3) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (4) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.
- (6) The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department."

Sec. 10. G.S. 87-94 reads as rewritten:

" § 87-94. *Civil penalties.*

(a) Any person who violates, on or after January 1, 1986, violates any provision of this Article, or any order issued pursuant thereto, or any adopted regulation promulgated rule adopted thereunder, shall be subject to an administrative, a civil penalty of not more than one hundred dollars (\$100.00) for each violation, as determined by the Environmental Management Commission. Secretary of Environment, Health, and Natural Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

(b) No penalty shall be assessed until the person alleged to be in violation has been:

- (1) Notified of the violation in accordance with the notice provisions set out in G.S. 87-91(a).
- (2) Informed by said notice of remedial action, which if taken within 30 days from receipt of the notice, will effect compliance with this Article and the regulations under it, and

- (3) Warned by said notice that a civil penalty can be assessed for failure to comply within the specified time.

(c) In determining the amount of the ~~penalty~~, the Commission ~~penalty~~ the Secretary shall consider the degree and extent of ~~aharm~~ caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his noncompliance, whether or not the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article, factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143-215.6 and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) ~~Any person assessed shall be notified of the assessment by registered or certified mail, or other means calculated to provide actual notice, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Environment, Health, and Natural Resources, or fails to request an administrative hearing to contest such assessment, within 30 days after receipt of notice, the Commission may request the Attorney General to institute a civil action to recover the amount of the assessment in the superior court of the county in which the person assessed resides or has his or its principal place of business or in which the well is located. The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.~~

(e) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment or requests remission of the assessment in whole or in part. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary of Environment, Health, and Natural Resources may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department."

Sec. 11. In the event that House Bill 1177, 1989 Regular Session, is ratified, amendments made by this act to any section or subsection of the General Statutes which is recodified or amended by House Bill 1177, 1989 Regular Session, as ratified shall be made to

such sections or subsections as they are recodified or amended. The Revisor of Statutes shall adjust the lettering and numbering of sections, subsections, and subdivisions of the General Statutes which are amended by both this act and by House Bill 1177, 1989 Regular Session, as ratified to conform to the lettering and numbering of such sections, subsections, and subdivisions as they appear in House Bill 1177, 1989 Regular Session, as ratified.

Sec. 12. This act shall become effective 1 October 1990.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 2254

CHAPTER 1037

AN ACT TO CLARIFY THE SCOPE OF THE FINANCIAL
QUALIFICATION AND COMPLIANCE HISTORY
REQUIREMENTS APPLICABLE TO APPLICANTS FOR
WATER DISCHARGE AND AIR EMISSIONS PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.1(b)(4) reads as rewritten:

"(4) The Commission shall have the power:

- a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.
- b. To require that an applicant satisfy the Commission Department that the applicant, or any ~~parent or subsidiary corporation if the applicant is a corporation;~~ parent, subsidiary, or other affiliate of the applicant or parent:
 1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and
 2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

As used in this subdivision, the words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition).

- c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

- d. To designate certain classes of minor activities for which a general permit may be issued, after considering:
 - 1. The environmental impact of the activities;
 - 2. How often the activities are carried out;
 - 3. The need for individual permit oversight; and
 - 4. The need for public review and comment on individual permits.
- e. To designate certain classes of minor activities for which:
 - 1. Performance conditions may be established by rule; and
 - 2. Individual or general permits are not required."

Sec. 2. G.S. 143-215.108(b)(5a) reads as rewritten:

"(5a) To require that an applicant satisfy the Commission Department that the applicant, or any ~~parent or subsidiary corporation if the applicant is a corporation;~~ parent, subsidiary, or other affiliate of the applicant or parent;

- a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and
- b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the ~~environment;~~ environment.

As used in this subdivision, the words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition);".

Sec. 3. This act is effective upon ratification. This act shall not be interpreted to express any legislative intent with regard to any pending permit application, or whether any pending permit application should be granted or denied.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 2297

CHAPTER 1038

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the Speaker of the House of Representatives; and

Whereas, the Speaker of the House of Representatives has made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. APPOINTMENTS OF THE SPEAKER

Section 1. Thomas P. McNamara of Wake County is appointed to the Administrative Rules Review Commission for a term to expire on June 30, 1992;

K. Clay Pendleton of Lincoln County is appointed to the Administrative Rules Review Commission for a term to expire on June 30, 1992;

Frayda S. Bluestein of Orange County is appointed to the Administrative Rules Review Commission for a term to expire on June 30, 1993; and

Vernon H. Rochelle of Lenoir County is appointed to the Administrative Rules Review Commission for a term to expire on June 30, 1993.

Sec. 2. Ann McKenney of Gaston County is appointed to the Western North Carolina Arboretum Board of Directors for a term to expire June 30, 1994.

Sec. 3. Henry E. "Gene" Miller of New Hanover County is appointed to the State Building Commission for a term to begin upon licensure by the North Carolina Licensing Board for General Contractors and to expire on June 30, 1993. This is the categorical appointment for a licensed building contractor whose primary business is or was in the construction of buildings.

Sec. 4. Anne-Marie T. Yates of Watauga County is appointed to the Child Day Care Commission of the Department of Human Resources for a term to expire on June 30, 1992. This appointment is the categorical appointment for a public member who is a parent of a child receiving day care services;

Christopher E. McClure of Wake County is appointed to the Child Day Care Commission of the Department of Human Resources for a term to expire on June 30, 1992. This appointment is the categorical appointment for a public member; and

Reverend Thomas Johnson Vestal of Wake County is appointed to the Child Day Care Commission of the Department of Human Resources for a term to expire on June 30, 1991. This appointment is the categorical appointment for a day care provider affiliated with a nonprofit day care facility or plan.

Sec. 5. Lacy Cummings of Robeson County and Henry A. McLaurin of Scotland County are appointed to the Southeastern North Carolina Farmers Market Commission for terms to expire on June 30, 1994.

Sec. 6. Hassell Thigpen of Edgecombe County is appointed to the Genetic Engineering Review Board for a term to expire on June 30, 1992. This is a public member categorical appointment for a practicing farmer who is an active member of a farm organization.

Sec. 7. Dr. Blair Harrold of Nash County is appointed to the North Carolina Health Insurance Trust Commission for a term to expire June 30, 1993. This is the categorical appointment for a representative of small business employers eligible to participate in the program of group health insurance.

Sec. 8. Willard A. Gourley, Jr., of Mecklenburg County is appointed to the North Carolina Housing Partnership for a term to begin on September 1, 1990, and to expire on August 31, 1993. This is a public member categorical appointment;

Anthony (Tony) Christopher Cardez of Wake County is appointed to the North Carolina Housing Partnership for a term to begin on September 1, 1990, and to expire on August 31, 1993. This is the categorical appointment for a resident of low income housing;

Patricia G. Garrett of Mecklenburg County is appointed to the North Carolina Housing Partnership for a term to begin on September 1, 1990, and to expire on August 31, 1993. This is the categorical appointment for a representative of a nonprofit housing development corporation;

Everette Stiles of Macon County is appointed to the North Carolina Housing Partnership for a term to begin on September 1, 1990, and to expire on August 31, 1993. This is the categorical appointment for a representative of the real estate lending industry; and

Donald M. Saunders of Wake County is appointed to the North Carolina Housing Partnership for a term to begin on September 1, 1990, and to expire on August 31, 1993. This is a public member categorical appointment.

Sec. 9. Bernice Pitt of Edgecombe County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term to expire on June 30, 1992.

Sec. 10. Robert J. Amon of Iredell County is appointed to the North Carolina Medical Database Commission for a term to expire on June 30, 1993. This is the categorical appointment for a representative of a commercial insurance company providing health insurance in North Carolina; and

Dr. Lawrence M. Cutchin of Edgecombe County is appointed to the North Carolina Medical Database Commission for a term to expire on June 30, 1993. This is the categorical appointment for a physician.

Sec. 11. Kathryn G. Kirkpatrick of Haywood County is appointed to the North Carolina Milk Commission for a term to expire on June 30, 1992. This is the categorical appointment for a public member.

Sec. 12. Dr. James C. Purvis of Halifax County is appointed to the Private Protective Services Board for a term to expire on June 30, 1993.

Sec. 13. Thomas F. Darden of Wake County is appointed to the North Carolina Teaching Fellows Commission for a term to expire on June 30, 1991;

Dr. Leroy T. Walker of Durham County is appointed to the North Carolina Teaching Fellows Commission for a term to expire on June 30, 1992; and

Marydell R. Bright of Alamance County is appointed to the North Carolina Teaching Fellows Commission for a term to expire on June 30, 1993.

Sec. 14. Raymond E. West of Orange County is appointed to the North Carolina State Board of Therapeutic Recreation Certification for a term to expire on June 30, 1993. This is the categorical appointment for a certified practicing therapeutic recreation specialist.

Sec. 15. David Felmet, Sr., of Haywood County is appointed to the North Carolina Low-Level Radioactive Waste Management Authority for a term to expire on June 30, 1994.

Sec. 16. Carol G. Love of Wake County is appointed to the North Carolina Solid Waste Management Capital Projects Financing Agency for a term to expire on June 30, 1991.

Sec. 17. Dr. Jan Crawford of Stanly County is appointed to the N. C. Nursing Scholars Commission for a term to expire on July 1, 1993, to fill the vacancy created by the resignation of Dr. Richard L. Brownell.

PART II. CONFORMING CHANGES

Sec. 18. G.S. 143B-30.1 reads as rewritten:

" § 143B-30.1. Administrative Rules Review Commission created.

(a) The Administrative Rules Review Commission is created. The Commission shall consist of eight members to be appointed by the General Assembly, four upon the recommendation of the President of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. ~~All~~ Except as provided in subsection (b) of this section, all appointees shall serve two-year terms.

(b) In 1990, two of the appointments made by the General Assembly upon the recommendation of the President of the Senate

shall expire June 30, 1991, and two shall expire June 30, 1992. In 1990, two of the appointments made by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall expire June 30, 1992, and two shall expire June 30, 1993. Subsequent terms shall be for two years.

(c) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission, and he shall designate the times and places at which the Commission shall meet. The Commission shall meet at least once a month. A quorum of the Commission shall consist of five members of the Commission. The Commission is an independent agency under Article III, Section 11 of the Constitution.

(d) Members of the Commission who are not officers or employees of the State shall receive compensation of two hundred dollars (\$200.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

(e) Any other provision of the General Statutes notwithstanding, the appointment of employees of the Commission shall be made by the Commission. Nothing in this Article shall be construed to exempt employees of the Commission from the State Personnel Act.

(f) The Commission shall prescribe procedures and forms to be used in submitting rules to the Commission for review. The Commission may have computer access to the North Carolina Administrative Code to enable the Commission and its staff to view and copy rules in the Code."

Sec. 19. G.S. 115C-363.23(a) reads as rewritten:

"(a) The Commission shall consist of 11 nonlegislative members as follows:

- (1) The Chairman of the State Board of Education, or his designee;
- (2) The Lieutenant Governor, or his designee;
- (3) Three persons appointed by the Governor;
- (4) Three persons appointed by the General Assembly on the recommendation of the President of the Senate, as provided in G.S. 120-121; and
- (5) Three persons appointed by the General Assembly on the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

Terms of commission members appointed under this section expire on June 30 of the year of expiration. In 1990, three members shall

be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one for a term to expire June 30, 1992, one for a term to expire June 30, 1993, and one for a term to expire June 30, 1994. In 1990, three members shall be appointed by the General Assembly upon the recommendation of the President of the Senate, one for a term to expire June 30, 1991, one for a term to expire June 30, 1992, and one for a term to expire June 30, 1993. In 1990, three members shall be appointed by the Governor, one for a term to expire June 30, 1992, one for a term to expire June 30, 1993, and one for a term to expire June 30, 1994. Subsequent appointments are for a term of four years."

Sec. 19.1. G.S. 135-38(a) reads as rewritten:

"(a) The Committee on Employee Hospital and Medical Benefits shall consist of 12 members as follows:

- (1) The President Pro Tempore of the Senate;
- (2) The Majority Leader of the Senate;
- (3) The Chairman of the Senate Committee on Appropriations;
- (4) Repealed by Session Laws 1987, c. 61, s. 1.
- (5) A Cochairman of the Senate Committee on Finance designated by the President of the Senate;
- (6) Two other members of the Senate appointed by the President of the Senate; and
- ~~(7) The Speaker Pro Tempore of the House of Representatives;~~
- ~~(8) The Chairman of the House Committee on Appropriations Base Budget;~~
- ~~(9) The Chairman of the House Committee on Appropriations Expansion Budget;~~
- ~~(10) The Chairman of the House Committee on Finance; and~~
- (11) ~~Two other~~ Six members of the House appointed by the Speaker."

Sec. 20. Unless otherwise specified, all appointments made by this act are for terms to begin upon ratification.

Sec. 21. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 2375

CHAPTER 1039

AN ACT TO ENACT THE 1990 OMNIBUS DRUG ACT.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the Omnibus Drug Act of 1990.

---TO PROVIDE THAT THE INVESTIGATING LAW ENFORCEMENT AGENCY SHALL RECEIVE SEVENTY-FIVE PERCENT OF THE MONIES COLLECTED BY AN ASSESSMENT UNDER THE CONTROLLED SUBSTANCE TAX LAW.

Sec. 2. Effective upon ratification and retroactive to January 1, 1990, G.S. 105-113.111 reads as rewritten:

" § 105-113.111. *Assessments.*

(a) Notwithstanding any other provision of law, an assessment against a dealer who possesses a controlled substance to which a stamp has not been affixed as required by this Article shall be made as provided in this section. The Secretary shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the Secretary. The Secretary shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for jeopardy assessments or the procedure set forth in G.S. 105-242, including causing execution to be issued immediately against the personal property of the dealer unless the dealer files with the Secretary a bond in the amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use all means available to collect the tax, penalty, and interest from any property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Article 9 of this Chapter.

(b) Of the monies collected pursuant to subsection (a), seventy-five percent (75%) shall be remitted to the State or local law enforcement agency that conducted the investigation of the dealer that led to the assessment under subsection (a). If more than one State or local law enforcement agency conducted the investigation, the Secretary of the Department of Revenue shall determine the equitable pro rata share for each agency based on the contribution each agency made to the investigation."

---TO REQUIRE CONVICTED DRUG OFFENDERS TO MAKE RESTITUTION OF ONE HUNDRED DOLLARS TO PAY FOR THE COSTS OF LAB FACILITIES AT THE STATE BUREAU OF INVESTIGATION.

Sec. 3. Effective upon ratification and applying to offenses occurring on or after that date, G.S. 90-95.3 reads as rewritten:

" § 90-95.3. Restitution to law-enforcement agencies for undercover purchases; purchases; restitution for drug analyses.

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars (\$100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General Fund."

---TO EXTEND THE LAW PERMITTING GRAND JURIES TO INVESTIGATE DRUG TRAFFICKING.

Sec. 4. Section 6 of Chapter 843 of the 1985 Session Laws, as amended by Chapter 1040 of the 1987 Session Laws is amended by deleting "shall expire October 1, 1991" and substituting "shall expire October 1, 1993".

---TO PROHIBIT POSSESSION OR DISTRIBUTION OF PRECURSOR CHEMICALS WITH INTENT TO MANUFACTURE ILLEGAL CONTROLLED SUBSTANCE.

Sec. 5. Effective October 1, 1990, and applying to offenses occurring on or after that date, G.S. 90-95 is amended by adding two new subsections to read:

"(d1) Except as authorized by this Article, it is unlawful for any person to:

- (1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or
- (2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

- (1) Anthranilic acid.
- (2) Benzyl cyanide.
- (3) Chloroephedrine.
- (4) Chloropseudoephedrine.
- (5) D-lysergic acid.

- (6) Ephedrine.
- (7) Ergonovine maleate.
- (8) Ergotamine tartrate.
- (9) Ethyl Malonate.
- (10) Ethylamine.
- (11) Isosafrole.
- (12) Malonic acid.
- (13) Methylamine.
- (14) N-acetylanthranilic acid.
- (15) N-ethylephedrine.
- (16) N-ethylepseudoephedrine.
- (17) N-methylephedrine.
- (18) N-methylpseudoephedrine.
- (19) Norpseudoephedrine.
- (20) Phenyl-2-propane.
- (21) Phenylacetic acid.
- (22) Phenylpropanolamine.
- (23) Piperidine.
- (24) Piperonal.
- (25) Propionic anhydride.
- (26) Pseudoephedrine.
- (27) Pyrrolidine.
- (28) Safrole.
- (29) Thionylchloride."

---TO PROVIDE ENHANCED MANDATORY MINIMUM SENTENCES FOR HABITUAL DRIVING WHILE IMPAIRED VIOLATORS.

Sec. 6. Effective October 1, 1990, G.S. 20-179(c) reads as rewritten:

"(c) Determining Existence of Grossly Aggravating ~~Factors.~~ Factors; Habitual Offender. -- At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. If the defendant has been convicted of two ~~or more~~ prior offenses involving impaired ~~driving, if driving~~ and the convictions occurred within seven years before the date of the offense for which he is being sentenced, the judge must impose the Level One punishment under subsection (g). The judge must also impose the Level One punishment under subsection (g) if he determines that two or more of the following grossly aggravating factors apply:

- (1) A single conviction for an offense involving impaired driving, if the conviction occurred within seven years before the date of the offense for which the defendant is being sentenced.

- (2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).
- (3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

If the judge determines that only one of the above grossly aggravating factors applies, he must impose the Level Two punishment under subsection (h). In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigation factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f)."

Sec. 7. Effective October 1, 1990, Chapter 20 of the General Statutes is amended by adding the following new section:

"§ 20-138.5. *Habitual impaired driving.*

(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within seven years of the date of this offense.

(b) A person convicted of violating this section shall be punished as a Class J felon and shall be sentenced to a minimum term of one year of imprisonment which shall not be suspended. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.

(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(d) A person convicted under this section shall have his license permanently revoked."

---TO PROVIDE THAT REGISTERS OF DEEDS SHALL DISTRIBUTE WITH MARRIAGE LICENSES INFORMATION ON POTENTIAL HARM TO CHILDREN FROM PRE-BIRTH EXPOSURE TO DRUG AND ALCOHOL ABUSE.

Sec. 8. Effective January 1, 1991, G.S. 161-11.1 reads as rewritten:

"§ 161-11.1. *Fees for Children's Trust Fund.*

(a) Five dollars (\$5.00) of each fee collected by a register of deeds on or after October 1, 1983, for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded, as soon as practical but no later than 60 days ~~of~~ after collection by the register of deeds, to the county finance officer, who shall forward same to the State Treasurer for deposit in the Children's Trust Fund.

(b) The register of deeds shall distribute with each marriage license issued a pamphlet promoting the prevention of fetal alcohol syndrome, cocaine exposure, and other potential harm to the fetus from drug and alcohol abuse by the mother. The pamphlet to be distributed shall be prepared and paid for by the Department of Environment, Health, and Natural Resources, which shall forward the requisite number of copies to the register of deeds of each county. The funds necessary to prepare and distribute this pamphlet shall not come from the Children's Trust Fund."

Sec. 9. No additional funds shall be appropriated to carry out the requirements of Section 8 of this act.

Sec. 10. Except as otherwise provided herein, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 524

CHAPTER 1040

AN ACT TO INCLUDE ADDITIONAL CONTROLLED
SUBSTANCES IN THE CONTROLLED SUBSTANCES
SCHEDULES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-89 reads as rewritten:

"§ 90-89. *Schedule I controlled substances.*

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

(a) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

01. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
1. Acetylmethadol.
- 1a. Repealed by Session Laws 1987, c.412, s.2.
- 1b. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

2. Allylprodine.
3. Alphacetylmethadol.
4. Alphameprodine.
5. Alphamethadol.
- 5a. Alpha-methylfentanyl
(N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl)
propionalide;
1(1-methyl-2-phenyl-ethyl)-4-(N-propanilido) piperidine).
6. Benzethidine.
7. Betacetylmethadol.
- 7a. Beta-hydroxfentanyl (N-[1-(2-hydroxy-
2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
- 7b. Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-
2-phenethyl)-3-methyl-4-piperidinyl]-N-
phenylpropanamide).
8. Betameprodine.
9. Betamethadol.
10. Betaprodine.
11. Clonitazene.
12. Dextromoramide.
13. Diampromide.
14. Diethylthiambutene.
15. Difenoxin.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.
21. Ethylmethylthiambutene.
22. Etonitazene.
23. Etoxidine.
24. Furethidine.
25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophenacetylmorphan.
- 28a. 1-methyl-4-phenyl-4 propionoxypiperidine (MPPP).
- 28b. 3-Methylfentanyl (N-[3-methyl-
1-(2-Phenylethyl)-4-Piperidyl]-N-Phenylpropanamide).
- 28c. 3-Methylthiofentanyl (N-[3-methyl-
1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
29. Morpheridine.
30. Noracymethadol.
31. Norlevorphanol.

- 32. Normethadone.
- 33. Norpipanone.
- 33a. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide.
- 34. Phenadoxone.
- 35. Phenampromide.
- 35a. 1-(2-phenethyl)-4-phenyl-4 acetoxypiperidine PEPAP).
- 36. Phenomorphan.
- 37. Phenoperidine.
- 38. Piritramide.
- 39. Proheptazine.
- 40. Properidine.
- 41. Propiram.
- 42. Racemoramide.
- 42a. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide.
- 42a, 42b. Tilidine.
- 43. Trimeperidine.

(b) Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- 1. Acetorphine.
- 2. Acetyldihydrocodeine.
- 3. Benzylmorphine.
- 4. Codeine methylbromide.
- 5. Codeine-N-Oxide.
- 6. Cyprenorphine.
- 7. Desomorphine.
- 8. Dihydromorphine.
- 9. Etorphine (except hydrochloride salt).
- 10. Heroin.
- 11. Hydromorphenol.
- 12. Methyldesorphine.
- 13. Methyldihydromorphine.
- 14. Morphine methylbromide.
- 15. Morphine methylsulfonate.
- 16. Morphine-N-Oxide.
- 17. Myorphine.
- 18. Nicocodeine.
- 19. Nicomorphine.
- 20. Normorphine.
- 21. Pholcodine.
- 22. Thebacon.

23. Drotebanol.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. 3, 4-methylenedioxyamphetamine.
2. 5-methoxy-3, 4-methylenedioxyamphetamine.
- 2a. 3,4-Methylenedioxymethamphetamine (MDMA).
- 2b. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA).
- 2c. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA).
3. 3, 4, 5-trimethoxyamphetamine.
4. Bufotenine.
5. Diethyltryptamine.
6. Dimethyltryptamine.
7. 4-methyl-2, 5-dimethoxyamphetamine.
8. Ibogaine.
9. Lysergic acid diethylamide.
10. Mescaline.
11. Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
12. N-ethyl-3-piperidyl benzilate.
13. N-methyl-3-piperidyl benzilate.
14. Psilocybin.
15. Psilocyn.
16. 2, 5-dimethoxyamphetamine.
17. 4-bromo-2, 5-dimethoxyamphetamine.
18. 4-methoxyamphetamine.
19. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
20. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.

21. Thiophene analog of phencyclidine. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.

21a. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine; Some other names: TCPy.

22. Parahexyl.

(d) Any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:

1. Mecloqualone.
2. Methaqualone.

(e) Stimulants. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having as stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

1. Fenethylline.

1a. (+/-)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine] (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline).

1b. N,N-dimethylamphetamine [Some other names: N,N,α-trimethylbenzeneethanamine; N,N,α-trimethylphenethylamine].

2. N-ethylamphetamine."

Sec. 2. G.S. 90-90 reads as rewritten:

" § 90-90. *Schedule II controlled substances.*

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

(a) Any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, unless specifically excepted or unless listed in another schedule:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium and opiate, excluding apomorphine, nalbuphine, dextrorphan, naloxone, naltrexone and nalmefene and their respective salts, but including the following:
 - (i) Raw opium.
 - (ii) Opium extracts.
 - (iii) Opium fluid extracts.
 - (iv) Powdered opium.
 - (v) Granulated opium.
 - (vi) Tincture of opium.
 - (vii) Codeine.
 - (viii) Ethylmorphine.
 - (ix) Etorphine hydrochloride.
 - (x) Hydrocodone.
 - (xi) Hydromorphone.
 - (xii) Metopon.
 - (xiii) Morphine.
 - (xiv) Oxycodone.
 - (xv) Oxymorphone.
 - (xvi) Thebaine.
2. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium.
3. Opium poppy and poppy straw.
4. Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
5. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).
 - (b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:
 01. Alfentanil.

1. Alphaprodine.
2. Anileridine.
3. Bezitramide.
- 3a. Carfentanil.
4. Dihydrocodeine.
5. Diphenoxylate.
6. Fentanyl.
7. Isomethadone.
8. Levomethorphan.
9. Levorphanol.
10. Metazocine.
11. Methadone.
12. Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
13. Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl- propane-carboxylic acid.
14. Pethidine.
15. Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenylpiperidine.
16. Pethidine -- Intermediate -- B, ethyl-4-phenylpiperidine-4-carboxylate.
17. Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperidine-4- carboxylic acid.
18. Phenazocine.
19. Piminodine.
20. Racemethorphan.
21. Racemorphan.
22. Sufentanil.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
2. Phenmetrazine and its salts.
3. Methamphetamine, including its salts, isomers, and salts of isomers.
4. Methylphenidate.
5. Phenylacetone. Some trade or other names: Phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and

salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically exempted by the Commission or listed in another schedule:

1. Amobarbital.
2. Repealed by Session Laws 1983, c. 695, s. 2, effective October 1, 1983.
3. Pentobarbital.
4. Phencyclidine.
5. Phencyclidine immediate precursors:
 - a. 1-Phenylcyclohexylamine
 - b. 1-Piperidinocyclohexanecarbonitrile (PCC)
6. Secobarbital.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. [Some other names: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol].
2. Nabilone [Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one]."

Sec. 3. G.S. 90-93 reads as rewritten:

" § 90-93. *Schedule V controlled substances.*

(a) This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule IV of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule IV of this Article. The following controlled substances are included in this schedule:

1. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the

compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic alone:

- (i) Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.
 - (ii) Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.
 - (iii) Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.
 - (iv) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
 - (v) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
 - (vi) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
2. Repealed by Session Laws 1985, c. 172, s. 9, effective May 10, 1985.
3. Stimulants. - Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:
- a. Propylhexedrine.
 - b. Pyrovalerone.
- (b) A Schedule V substance may be sold at retail without a prescription only by a registered pharmacist and no other person, agent or employee may sell a Schedule V substance even if under the direct supervision of a pharmacist.

(c) Notwithstanding the provisions of G.S. 90-93(b), after the pharmacist has fulfilled the responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of a Schedule V substance, may be completed by a nonpharmacist. A pharmacist may refuse to sell a Schedule V substance until he is satisfied that the product is being obtained for medicinal purposes only.

(d) A Schedule V substance may be sold at retail without a prescription only to a person at least 18 years of age. The pharmacist must require every retail purchaser of a Schedule V substance to furnish suitable identification, including proof of age when appropriate, in order to purchase a Schedule V substance. The name and address obtained from such identification shall be entered in the record of disposition to consumers."

Sec. 4. G.S. 90-101(i) reads as rewritten:

"(i) A physician licensed by the Board of Medical Examiners pursuant to Article I of this Chapter may dispense or administer Dronabinol or Nabilone as scheduled in G.S. 90-90(e) only as an antiemetic agent in cancer chemotherapy."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 951

CHAPTER 1041

AN ACT TO CONFORM THE GUILTY PLEA JURISDICTION OF
MAGISTRATES AND CLERKS WITH THE 1989
AMENDMENTS TO G.S. 14-399.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-273(9) reads as rewritten:

"(9) Notwithstanding the provisions of subdivision (1) of this section, to accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-399(c) and enter judgments in those cases as the chief district court judge directs. No violation of G.S. 14-399 may be disposed of pursuant to this subdivision unless the criminal pleading specifically charges a violation of subsection (c) of G.S. 14-399."

Sec. 2. G.S. 7A-180 is amended by adding a new subdivision to read:

"(9) Has the power to accept written appearances, waivers of trial and pleas of guilty to violations of G.S. 14-399(c), and, in such cases, to enter judgments as the chief district court judge shall direct. No violation of G.S. 14-399 may be disposed of pursuant to this subdivision unless the criminal pleading specifically charges a violation of subsection (c) of G.S. 14-399."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 1446

CHAPTER 1042

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF
THE CITY OF NEWTON.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Newton is hereby revised and consolidated to read as follows:

"THE CHARTER OF THE CITY OF NEWTON.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. *Incorporation and Corporate Powers.* The City of Newton shall continue to be a body politic and corporate under the name of 'City of Newton'. and shall continue to be vested with all property which now belongs to the City, and shall have all of the powers, duties, rights, privileges and immunities conferred and imposed on cities by the general law of North Carolina.

"Section 1.2. *Powers Granted Supplementary.* The powers granted by this Charter are supplementary to any powers heretofore or hereafter granted by any other general law, local act or amendment to this Charter for the same or similar purposes.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. *Corporate Boundaries.* The boundaries of the City of Newton are set out on a map entitled, 'Boundary Map of the City of Newton, North Carolina.' The map is maintained in the office of the City Clerk, as required by G.S. 160A-22. All extensions of the corporate boundaries shall be governed by the general law of North Carolina.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. *Structure of Governing Body; Number of Members.* The Governing Body of the City of Newton is the Board of Aldermen, which has six members, and the Mayor.

"Section 3.2. *Manner of Election of Board.* The qualified voters of the entire City elect the members of the Board.

"Section 3.3. *Term of Office of Members of the Board.* Members of the Board are elected to four-year terms. In 1991 and each four years thereafter, three members of the Board shall be elected. In 1993 and each four years thereafter, three members of the Board shall be elected.

"Section 3.4. *Election of Mayor; Term of Office.* The qualified voters of the entire City elect the Mayor. A new Mayor shall be elected in 1991 and each two years thereafter.

"ARTICLE IV. ELECTIONS.

"Section 4.1. *Conduct of City Elections.* City officers shall be elected on a nonpartisan basis and the results determined by plurality, as provided by G.S. 163-292.

"Section 4.2. *Special Elections.* There shall be no special elections of any type except those permitted under the general law of North Carolina.

"ARTICLE V. ADMINISTRATION.

"Section 5.1. *City to Operate Under Council-Manager Plan.* The City of Newton operates under the council-manager plan as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes.

"ARTICLE VI. PRESUMPTION OF TITLE IN THE CITY.

"Section 6.1. *Presumption of Title in the City.* In the absence of any contracts with the City in relation to the lands used or occupied by it for the purpose of streets, sidewalks, alleys, or other public works of the City, signed by the owner thereof or his agent, it shall be presumed that such land has been granted to the City by the owner or owners thereof, and the City shall have good right and title thereto, and shall have, hold and enjoy the same. Unless the owner or owners of such land, or those claiming under them shall make claim or demand for compensation within two years next after such land was taken, he, or they, shall be forever barred from recovering the land, or having any compensation therefor; provided, nothing herein contained shall affect the rights of infants until two years after the removal of their disabilities."

Sec. 2. The purpose of this act is to revise the Charter of the City of Newton and to consolidate herein certain acts concerning the property, affairs, and government of the City. It is intended to continue without interruption those provisions of prior acts which are consolidated into this act, so that all rights and liabilities that have accrued are preserved and may be enforced. This act does not affect the terms of office of elected officials of the City of Newton holding office on the effective date of this act.

Sec. 3. This act shall not be deemed to repeal, modify, nor in any manner to affect any of the following acts, portions of acts, or amendments thereto, whether or not such acts, portions of acts, or amendments are expressly set forth herein:

- (1) Sections 104 through 131 of Chapter 39, Private Laws of 1907;
- (2) Sections 4 and 5 of Chapter 240, Private Laws of 1911;
- (3) Chapter 48, Private Laws of 1919;
- (4) Chapter 145, Private Laws of 1925;
- (5) Chapter 200, Private Laws of 1935;
- (6) Chapter 512, Session Laws of 1951;
- (7) Chapter 731, Session Laws of 1955;
- (8) Chapter 716, Session Laws of 1961;
- (9) Chapter 363, Session Laws of 1969;
- (10) Chapter 298, Session Laws of 1981;
- (11) Chapter 503, Session Laws of 1983;
- (12) Any other acts concerning the property, affairs, or government of public schools in the City of Newton; and

- (13) Any acts validating, confirming, approving, or legalizing official proceedings, actions, contracts, or obligations of any kind.

Sec. 4. The following acts or portions of acts, having served the purposes for which enacted, or having been consolidated into this act, are hereby repealed:

- (1) Chapter 112, Session Laws of 1967;
- (2) Chapter 240, Session Laws of 1969;
- (3) Section 1, Chapter 382, Session Laws of 1979; and
- (4) Chapter 149, Session Laws of 1981.

Sec. 5. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

- (1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act;
- (2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of ordinances or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

Sec. 6. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted shall be revived by:

- (1) The repeal herein of any act repealing such law, or
- (2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

Sec. 7. (a) All existing ordinances and resolutions of the City of Newton, and all existing rules or regulations of departments or agencies of the City of Newton, not inconsistent with the provisions of this act, shall continue in full force and effect until repealed, modified, or amended.

(b) No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the City of Newton or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

Sec. 8. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9. General Repeal. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 806

CHAPTER 1043

AN ACT TO AUTHORIZE THE CITY OF RALEIGH TO
REGULATE STORMWATER.

The General Assembly of North Carolina enacts:

Section 1. The governing body of the City of Raleigh may adopt such ordinances as it deems appropriate to regulate stormwater, by requiring the submission of plans in order to control stormwater from the site of any construction, landscaping, clearing projects or any other project which in any manner alters the natural structure of the land mass within said City of Raleigh and its extraterritorial planning jurisdiction, provided however, that such ordinance shall not be applicable to land-disturbing activities that are listed in G.S. 113A-56. The governing body of the City may establish by ordinance a program of regulations whereby prior to any land disturbing activity within the City of Raleigh and its extraterritorial planning jurisdiction, a permit must be obtained in the manner prescribed by the ordinance, and in accordance with the criteria and standards as established by the governing board.

The ordinance may provide that in lieu of the required improvements shown on the plan, a developer may be required to provide funds that the City may use for the construction of devices, structures, drainage easements, and impoundments to control stormwater within the drainage basin; these funds may be used to serve more than one site or development within the area. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required improvements, shall be based on either impervious surfaces of the site or quantity of stormwater generated from the surfaces of the site or quantity of stormwater generated from the site. The ordinance may require a combination of partial payment of funds and partial construction when the governing body of the City determines that a combination is in the best interest of the citizens of the area to be served.

The City of Raleigh, upon establishing the amount of funds considered to be the value of the work required by this ordinance either to be performed or paid in lieu by the developer, shall match this total amount with other funds to be used for overall stormwater improvements for the City of Raleigh. This funding shall be based on

an annual amount, based on work contracted for, and adjusted in the following year if required.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 950

CHAPTER 1044

AN ACT TO INCREASE THE FEE FOR SERVICE OF PROCESS IN CIVIL AND CRIMINAL ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or *nolo contendere*, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides:

- (1) For each arrest or personal service of criminal process, including citations and subpoenas, the sum of ~~four dollars (\$4.00)~~ five dollars (\$5.00) to be remitted to the county wherein the arrest was made or process was served, except that in those cases in which the arrest was made or process served by a law-enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.
- (2) For the use of the courtroom and related judicial facilities, the sum of five dollars (\$5.00) in the district court, including cases before a magistrate, and the sum of twenty-three dollars (\$23.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has

heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.

- (3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of seven dollars and twenty-five cents (\$7.25), to be remitted to the State Treasurer. Fifty cents (50¢) of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents (\$5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the General Statutes, with one dollar and twenty-five cents (\$1.25) being administered in accordance with the provisions of G.S. 143-166.50(e). One dollar (\$1.00) of this sum shall be administered as is provided in Article 12F of Chapter 143 of the General Statutes.
- (3a) For the supplemental pension benefits of sheriffs, the sum of seventy-five cents (75¢), to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.
- (4) For support of the General Court of Justice, the sum of twenty-three dollars (\$23.00) in the district court, including cases before a magistrate, and the sum of thirty dollars (\$30.00) in the superior court, to be remitted to the State Treasurer."

Sec. 2. G.S. 7A-311(a) reads as rewritten:

"(a) In a civil action or special proceeding, the following fees and commissions shall be assessed, collected, and remitted to the county:

- (1) a. ~~Effective July 1, 1979, for every civil action filed on or after that date, for each item of civil process, including summons, subpoenas, notices, motions, orders, writs and pleadings served, three dollars (\$3.00). When two or more items of civil process are served simultaneously~~

~~on one party, only one three-dollar (\$3.00) fee shall be charged.~~ Effective ~~July~~ October 1, 1981, 1990, for every civil action filed on or after that date, for each item of civil process, including summons, subpoenas, notices, motions, orders, writs and pleadings served, ~~four dollars (\$4.00),~~ the sum of five dollars (\$5.00). When two or more items of civil process are served simultaneously on one party, only one ~~four-dollar (\$4.00)~~ five dollar (\$5.00) fee shall be charged.

- b. When an item of civil process is served on two or more persons or organizations, a separate service charge shall be made for each person or organization. If the process is served, or attempted to be served, by a city policeman, the fee shall be remitted to the city rather than the county. If the process is served, or attempted to be served by the sheriff, the fee shall be remitted to the county. This subsection shall not apply to service of summons to jurors.
- (2) For the seizure of personal property and its care after seizure, all necessary expenses, in addition to any fees for service of process.
 - (3) For all sales by the sheriff of property, either real or personal, or for funds collected by the sheriff under any judgment, five percent (5%) on the first five hundred dollars (\$500.00), and two and one-half percent (2 1/2%) on all sums over five hundred dollars (\$500.00), plus necessary expenses of sale. Whenever an execution is issued to the sheriff, and subsequently while the execution is in force and outstanding, and after the sheriff has served or attempted to serve such execution, the judgment, or any part thereof, is paid directly or indirectly to the judgment creditor, the fee herein is payable to the sheriff on the amount so paid. The judgment creditor shall be responsible for collecting and paying all execution fees on amounts paid directly to the judgment creditor.
 - (4) For execution of a judgment of ejectment, all necessary expenses, in addition to any fees for service of process.
 - (5) For necessary transportation of individuals to or from State institutions or another state, the same mileage and subsistence allowances as are provided for State employees."

Sec. 3. This act shall become effective October 1, 1990, and shall apply to process served on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR VIOLATIONS OF THE WATER QUALITY, AIR QUALITY, OIL AND HAZARDOUS SUBSTANCES CONTROL, AND HAZARDOUS WASTE MANAGEMENT PROGRAMS THAT ARE KNOWINGLY AND WILLFULLY COMMITTED OR THAT INVOLVE KNOWING ENDANGERMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.6(a) is recodified as G.S. 143-215.6A and reads as rewritten:

"§ 143-215.6A. Enforcement procedures: civil penalties.

(a) Civil Penalties. --

~~(1)~~ (a) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Commission against any person who:

- ~~a.~~ (1) Violates any classification, standard, limitation or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.
- ~~b.~~ (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
- ~~c.~~ (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
- ~~d.~~ (4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or G.S. 143-355(k) relating to water use information.
- ~~e.~~ (5) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.
- ~~f.~~ (6) Violates a rule of the Commission implementing this Part or G.S. 143-355(k).
- ~~g.~~ (7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.
- (8) Violates the offenses set out in G.S. 143-215.6B.

- (2) (b) If any action or failure to act for which a penalty may be assessed under this ~~subsection~~ section is continuous, the Commission may assess a penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the violation continues, unless otherwise stipulated.
- (3) (c) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.
- (4) (d) The Commission may assess the penalties provided for in this ~~subsection~~ section. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Commission may specify, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Commission, in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment.
- (5) (e) A civil penalty of not more than ten thousand dollars (\$10,000) per month may be assessed by the Commission against any local government which fails to adopt or enforce a water supply watershed protection program as required by G.S. 143-214.5. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement."

Sec. 2. G.S. 143-215.6(b) is recodified as G.S. 143-215.6B and reads as rewritten:

" § 143-215.6B. *Enforcement procedures: criminal penalties.*

~~(b) Criminal Penalties.~~

(4) (a) For purposes of this ~~subsection~~ section, the term 'person' shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided,

however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this ~~subsection~~ section shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(b) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(c) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(d) For the purposes of the felony provisions of this section, a person's state of mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

- (1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.
- (2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.
- (3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.
- (4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.
- (5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall

not be construed to require the Department to develop or use written civil enforcement guidelines.

- (6) Occasional, inadvertent, short-term violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(e) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

- (1) (f) Any person who ~~willfully or~~ negligently violates any classification, standard or limitation established pursuant to G.S. 143-214.1, 143-214.2, or 143-215; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or any rule of the Commission implementing any of the said sections, shall be guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars (\$200,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed six months, or by both.

(g) Any person who knowingly and willfully violates any classification, standard, or limitation established in the rules of the Commission pursuant to G.S. 143-214.1, 143-214.2, or 143-215 or any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2 shall be guilty of a Class J felony, punishable by a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed three years, or by both. For the purposes of this subsection, the phrase 'knowingly and willfully' shall mean intentionally and consciously as the courts of this State, according to

the principles of common law interpret the phrase in the light of reason and experience.

- (h) (1) Any person who knowingly violates any classification, standard, or limitation established in the rules of the Commission pursuant to G.S. 143-214.1, 143-214.2, 143-215, or any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2 and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class H felony, punishable by a fine not to exceed two hundred fifty thousand dollars (\$250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars (\$1,000,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed 10 years, or by both.
- (2) For the purposes of this subsection, a person's state of mind is knowing with respect to:
- a. His conduct, if he is aware of the nature of his conduct;
 - b. An existing circumstance, if he is aware or believes that the circumstance exists; or
 - c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.
- (3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:
- a. The person is responsible only for actual awareness or actual belief that he possessed; and
 - b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.
- (4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

~~(2)~~ (i) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or a rule implementing this ~~Article~~, Article; or who knowingly makes a false statement of a material fact in a rulemaking proceeding or contested case under this Article; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or ~~regulations~~ rules of the Commission implementing this ~~Article~~, Article shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both.

~~(3)~~ (j) Any person convicted of ~~an~~ a felony offense under either ~~subdivision (1) or subdivision (2) of this subsection~~ subdivisions (g), (h), or (i) of this section following a previous felony conviction under ~~such subdivision~~ this section shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of imprisonment provided in the ~~subdivision~~ subsection under which the second or subsequent conviction occurs."

Sec. 3. G.S. 143-215.6(c) is recodified as G.S. 143-215.6C and reads as rewritten:

"§ 143-215.6C. *Enforcement procedures: injunctive relief.*

(c) ~~Injunctive Relief.~~ Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing this Part, the Department may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Part. For purposes of this ~~subsection~~ section

references to 'this Part' include G.S. 143-355(k) relating to water use information."

Sec. 4. G.S. 143-215.114(a) is recodified as G.S. 143-215.114A and reads as rewritten:

"§ 143-215.114A. Enforcement procedures: civil penalties.

(a) Civil Penalties.

~~(1)~~ (a) A civil penalty of not more than five thousand dollars (\$5,000) may be assessed against any person who:

~~a.~~ (1) Violates any classification, standard or limitation established pursuant to G.S. 143-215.107;

~~b.~~ (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit;

~~c.~~ (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110;

~~d.~~ (4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Article 21 of this Chapter;

~~f.~~ (5) Violates a rule of the Commission or a local governing body implementing this Article.

(6) Violates the offenses set out in G.S. 143-215.114B.

~~(2)~~ (b) Each day of continuing violation after written notification from the Commission shall be considered a separate offense.

~~(3)~~ (c) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements.

~~(4)~~ (d) The Commission, or, if authorized by the Commission, the Department, may assess the penalties provided for in this ~~subsection,~~ section. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Commission may specify, the Commission may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment."

Sec. 5. G.S. 143-215.114(b) is recodified as G.S. 143-215.114B and reads as rewritten:

"§ 143-215.114B. Enforcement procedures: criminal penalties.

(b) Criminal Penalties.

(4) (a) For purposes of this subsection, section, the term 'person' shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection section shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(b) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(c) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(d) For the purposes of the felony provisions of this section, a person's state of mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

- (1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.
- (2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.
- (3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.
- (4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.
- (5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil

enforcement guidelines in use by the Department at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

- (6) Occasional, inadvertent, short-term violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(e) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

~~(1)~~ (f) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-215.107; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 or any rule of the Commission implementing any of the said section, shall be guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars (\$200,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed six months, or by both.

(g) Any person who knowingly and willfully violates any classification, standard, or limitation established in the rules of the Commission pursuant to G.S. 143-215.107 or any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110, shall be guilty of a Class J felony, punishable by a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed three years, or by both. For the purposes of this subsection, the phrase 'knowingly and willfully' shall mean intentionally and consciously as the courts of this State, according to the principles of

common law, interpret the phrase in the light of reason and experience.

- (h) (1) Any person who knowingly violates any classification, standard, or limitation established in the rules of the Commission pursuant to G.S. 143-215.107 or any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class H felony, punishable by a fine not to exceed two hundred fifty thousand dollars (\$250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars (\$1,000,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed 10 years or by both.
- (2) For the purposes of this subsection, a person's state of mind is knowing with respect to:
- a. His conduct, if he is aware of the nature of his conduct;
 - b. An existing circumstance, if he is aware or believes that the circumstance exists; or
 - c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.
- (3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:
- a. The person is responsible only for actual awareness or actual belief that he possessed; and
 - b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.
- (4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an

affirmative defense under this subdivision by a preponderance of the evidence.

(2) (i) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article and Article 21, or a rule implementing this Article and Article 21, or who knowingly makes a false statement of a material fact in a rulemaking or contested case under this Article or Article 21; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article and Article 21 ~~or regulations or rules of~~ the Commission implementing this Article and Article 21, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both.

(3) (j) Any person convicted of ~~an~~ a felony offense under ~~either subdivision (1) or subdivision (2) of this subsection~~ subsections (g), (h), or (i) of this section following a previous felony conviction under such subdivision this section shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine or twice the term of imprisonment provided in the ~~subdivision~~ subsection under which the second or subsequent conviction occurs."

Sec. 6. G.S. 143-215.114(c) is recodified as G.S. 143-215.114C and reads as rewritten:

"§ 143-215.114C. Enforcement procedures: injunctive relief.

(c) ~~Injunctive Relief.~~ -- Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article or Article 21 of this Chapter or a rule implementing this Article or Article 21 of this Chapter, the Department, either before or after the institution of any other action or proceeding authorized by this Article or Article 21 of this Chapter, may request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the violation occurred or may occur. Upon a determination by the court that the alleged violation of the provisions of this Article or Article 21 of this Chapter or the regulation of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings

from any penalty prescribed for violation of this Article or Article 21 of this Chapter."

Sec. 7. G.S. 143-215.91(a) and G.S. 143.91(c) are recodified as G.S. 143-215.88A and read as rewritten:

" § 143.215.88A. Enforcement procedures: civil penalties.

(a) ~~Civil Penalties.~~ Any person who intentionally or negligently discharges oil or other hazardous substances, or knowingly causes or permits the discharge of oil in violation of this Part or fails to report a discharge as required by G.S. 143-215.85 or who fails to comply with the requirements of G.S. 143-215.84(a) or orders issued by the Commission as a result of violations thereof, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for every such violation, the amount to be determined by the Commission after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1, the amount expended by the violator in complying with the provisions of G.S. 143-215.84, the estimated damages attributed to the violator under G.S. 143-215.90, and such other considerations as the Commission deems appropriate. Every act or omission which causes, aids or abets a violation of this ~~section~~ subsection shall be considered a violation under the provisions of this ~~section~~ subsection and subject to the penalty herein provided. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Commission describing the violation with reasonable particularity and advising such person that the penalty is due. A person may contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after receiving notice of the penalty. If a person fails to pay a penalty assessed against him, the Department shall refer the matter to the Attorney General for collection. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any person in any criminal case, except as prosecution for perjury or for giving a false statement.

~~(c) (b) The civil and criminal penalties provided by this section (except the civil penalty for failure to report) section, except the civil penalty for failure to report, shall not apply to the discharge of a pesticide regulated by the North Carolina Pesticide Board, if such discharge would constitute a violation of the North Carolina Pesticide Law and if such discharge has not entered the surface waters of the State."~~

Sec. 8. G.S. 143-215.91(b) is recodified as G.S. 143-215.88B and reads as rewritten:

" § 143-215.88B. Enforcement procedures: criminal penalties.

(b) Criminal Penalties. --

(a) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(b) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(c) For the purposes of the felony provisions of this section, a person's state of mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

- (1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.
- (2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.
- (3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.
- (4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.
- (5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(d) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under

this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(e) Any person who ~~intentionally or~~ knowingly and willfully or willfully discharges or causes or permits the discharge of oil or other hazardous substances in violation of this Part shall be guilty of a ~~misdemeanor~~ Class J felony punishable by imprisonment not to exceed ~~six months~~ three years or by fine to be not more than ~~ten thousand dollars (\$10,000)~~ one hundred thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation continues, or by both, in the discretion of the court. No proceeding shall be brought or continued under this subsection for or on account of a violation by any person who has previously been convicted of a federal violation or a local ordinance violation based upon the same set of facts. For the purposes of this subsection, the phrase 'knowingly and willfully' shall mean intentionally and consciously as the courts of this State, according to the principles of common law interpret the phrase in the light of reason and experience.

- (f) (1) Any person who knowingly discharges or causes or permits the discharge of oil or other hazardous substances in violation of this Part, and who knows at that time that he places another person in imminent danger of death or serious bodily injury shall be guilty of a Class H felony punishable by imprisonment not to exceed 10 years or by fine not to exceed two hundred fifty thousand dollars (\$250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars (\$1,000,000) for each period of 30 days during which a violation continues, or by both, in the discretion of the court.
- (2) For the purposes of this subsection, a person's state of mind is knowing with respect to:
 - a. His conduct, if he is aware of the nature of his conduct;
 - b. An existing circumstance, if he is aware or believes that the circumstance exists; or
 - c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

- (3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:
- a. The person is responsible only for actual awareness or actual belief that he possessed; and
 - b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.
- (4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(g) The criminal penalties provided by this section shall not apply to the discharge of a pesticide regulated by the North Carolina Pesticide Board, if such discharge would constitute a violation of the North Carolina Pesticide Law and if such discharge has not entered the surface waters of the State."

Sec. 9. Part 2 of Article 1 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-26.1. Criminal violation of Article 9.

(a) The definition of 'person' set out in G.S. 130A-290 shall apply to this section. In addition, for purposes of this section, the term 'person' shall also include any responsible corporate or public officer or employee.

(b) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(c) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(d) For the purposes of the felony provisions of this section, a person's state of mind shall not be found 'knowingly and willfully' or

'knowingly' if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

- (1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.
- (2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.
- (3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.
- (4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.
- (5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(e) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(f) Any person who knowingly and willfully does any of the following shall be guilty of a Class I felony, punishable by a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed five years, or by both;

- (1) Transports or causes to be transported any hazardous waste identified or listed under G.S. 130A-294(c) to a facility which does not have a permit or interim status under G.S. 130A-294(c) or 42 U.S.C. § 6921, *et seq.*
- (2) Transports or causes to be transported such hazardous waste with the intent of delivery to a facility without a permit.
- (3) Treats, stores, or disposes of such hazardous waste without a permit or interim status under G.S. 130A-294(c) or 42 U.S.C. § 6921, *et seq.*, or in knowing violation of any material condition or requirement or such permit or applicable interim status rules.

(g) Any person who knowingly and willfully does any of the following shall be guilty of a Class J felony, punishable by a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided that the fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed three years, or by both:

- (1) Transports or causes to be transported hazardous waste without a manifest as required under G.S. 130A-294(c).
- (2) Transports hazardous waste without a United States Environmental Protection Agency identification number as required by rules promulgated under G.S. 130A-294(c).
- (3) Omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with rules promulgated under G.S. 130A-294(c).
- (4) Generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste or any used oil burned for energy recovery and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with rules promulgated under G.S. 130A-294(c).

(h) For the purposes of subsections (f) and (g) of this section, the phrase 'knowingly and willfully' shall mean intentionally and consciously as the courts of this State, according to the principles of common law interpret the phrase in the light of reason and experience.

- (i) (1) Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste or used oil regulated under G.S. 130A-294(c) in violation of subsection (f) or (g) of this section, who knows at the

time that he thereby places another person in imminent danger of death or personal bodily injury shall be guilty of a Class H felony punishable by imprisonment not to exceed 10 years or by fine not to exceed two hundred fifty thousand dollars (\$250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars (\$1,000,000) for each period of 30 days during which a violation continues, or by both, in the discretion of the court.

(2) For the purposes of this subsection, a person's state of mind is knowing with respect to:

- a. His conduct, if he is aware of the nature of his conduct;
- b. An existing circumstance, if he is aware or believes that the circumstance exists; or
- c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:

- a. The person is responsible only for actual awareness or actual belief that he possessed; and
- b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(j) Any person convicted of an offense under subsection (f), (g), or (h) of this section following a previous conviction under this section shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of imprisonment provided in the subsection under which the second or subsequent conviction occurs."

Sec. 10. G.S. 143-215.69(b) reads as rewritten:

"(b) Civil Penalties. -- The Commission may assess a civil penalty against a person who violates this Part or a rule of the Commission implementing this Part. The amount of the penalty shall not exceed the maximum imposed in ~~G.S. 143-215.6~~ 143-215.6A and shall be assessed in accordance with the procedure set out in ~~G.S. 143-215.6~~ 143-215.6A for assessing a civil penalty."

Sec. 11. G.S. 113-60.29 reads as rewritten:

"§ 113-60.29. *Penalties.*

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned for a period of not more than 30 days, or both, in the discretion of the court. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by ~~G.S. 143-215.114 of Article 21B of Chapter 143 of the General Statutes.~~ G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under G.S. 113-60.28."

Sec. 12. G.S. 143-215.89 reads as rewritten:

"§ 143-215.89. *Multiple liability for necessary expenses.*

Any person liable for costs of cleanup of oil or other hazardous substances under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the discharge of oil or other hazardous substances into the waters of the State, including any amount recoverable by the State as necessary expenses. The total recovery by the State for damage to the public resources pursuant to ~~G.S. 143-215.91~~ G.S. 143-215.90 and for the cost of oil or other hazardous substances cleanup, arising from any discharge, shall not exceed the applicable limits prescribed by federal law with respect to the United States government on account of such discharge."

Sec. 13. The Revisor of Statutes shall correct any cross-reference in the General Statutes to any section or subsection of the General Statutes which is recodified by this act.

Sec. 14. This act shall become effective 1 January 1991, and shall apply to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 2246

CHAPTER 1046

AN ACT TO PROVIDE FOR STAGGERED TERMS IN THE MEMBERSHIP OF THE SIMMONS-NOTT AIRPORT AUTHORITY, TO CHANGE THE NAME OF THAT AUTHORITY TO THE CRAVEN COUNTY REGIONAL AIRPORT AUTHORITY, AND TO CHANGE THE NAME OF THE SIMMONS-NOTT AIRPORT TO THE CRAVEN COUNTY REGIONAL AIRPORT.

The General Assembly of North Carolina enacts:

Section 1. Section 2(b) of Chapter 1197, Session Laws of 1979, as rewritten by Section 1 of Chapter 838, Session Laws of 1985, reads as rewritten:

"(b) The Airport Authority shall consist of five members appointed by the Board of Commissioners of Craven County for two-year terms. The initial terms shall commence July 1, 1986. Effective on or after July 1, 1990, the Craven County Board of Commissioners shall appoint two members to the Airport Authority for two-year terms, and three members to the Airport Authority for three-year terms. All terms shall expire on June 30 of the year of expiration. At the expiration of those terms, successors shall be appointed for two-year terms, and subsequent terms shall likewise be for two years."

Sec. 1.1. Sections 1 and 7 of Chapter 1197, Session Laws of 1979 are amended by deleting "Simmons-Nott Airport Authority" and substituting "Craven County Regional Airport".

Sec. 1.2. Chapter 1197, Session Laws of 1979 is amended by deleting "Simmons-Nott Airport" wherever that phrase appears, and substituting "Craven County Regional Airport".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 2394

CHAPTER 1047

AN ACT TO PROVIDE FOR THE FILING OF NOTICES OF LIENS, CERTIFICATES, AND OTHER NOTICES AFFECTING VARIOUS FEDERAL LIENS IN THE SAME MANNER AS NOTICES OF FEDERAL TAX LIENS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 44 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11A.

"Uniform Federal Lien Registration Act." § 44-68.10. *Short title.*

This act may be cited as the Uniform Federal Lien Registration Act.

" § 44-68.11. *Scope.*

This act applies only to federal tax liens, to other federal liens notices of which under any Act of Congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens, and to notices of federal liens upon real property pursuant to 42 U.S.C. § 9607(l).

" § 44-68.12. *Place of filing.*

(a) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this act.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the clerk of superior court of the county in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

- (1) If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this State, as these entities are defined in the internal revenue laws of the United States, in the office of the Secretary of State;
- (2) In all other cases, in the office of the clerk of superior court of the county where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

" § 44-68.13. *Execution of notices and certificates.*

Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgement is necessary.

" § 44-68.14. *Duties of filing officer.*

(a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (b) is presented to a filing officer who is:

- (1) The Secretary of State, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of G.S. 25-9-403(4), as if the notice were a financing statement within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes; or

- (2) Any other officer described in G.S. 44-68.12, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the Secretary of State for filing he shall cause:

- (1) A certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes, but the notice of lien to which the certificate relates may not be removed from the files; and

- (2) A certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes.

(c) If a refiled notice of federal lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing to any other filing officer specified in G.S. 44-68.12, he shall permanently attach the refiled notice or the certificate to the original notice of lien and enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this act or (reference previous federal tax lien registration act), naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is five dollars (\$5.00). Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of one dollar (\$1.00) per page.

"§ 44-68.15. Fees.

(a) The fee for filing and indexing each notice of lien or certificate or notice affecting the lien in the Office of the Secretary of State is:

- (1) For a lien on real estate, five dollars (\$5.00);
(2) For a lien on tangible and intangible personal property, five dollars (\$5.00);

(3) For a certificate of discharge or subordination, five dollars (\$5.00);

(4) For all other notices, including a certificate of release or nonattachment, five dollars (\$5.00).

(b) The fee for filing and indexing each notice of lien or certificate or notice affecting the lien in the office of the Clerk of Superior Court, and the fee for furnishing the certificate or copies provided for in G.S. 44-68.14(d), is as provided in G.S. 7A-308.

(c) The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

" § 44-68.16. Uniformity of application and construction.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

" § 44-68.17. Liens and notices filed before August 1, 1990.

All liens, notices, certificates, releases and refilings filed before August 1, 1990 to which this Article would otherwise apply if such filing occurred on or after August 1, 1990, and any indexes pertaining thereto, shall be transferred to and maintained in the office in which such filing would have been made had the filing occurred on or after August 1, 1990."

Sec. 1.1. Part 4 of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

" § 130A-310.23. Filing notices of Superfund liens.

Notices of liens and certificates of notices affecting liens for obligations payable to the United States under Superfund (42 U.S.C. § 9607(l) shall be filed in accordance with Article 11A of Chapter 44 of the General Statutes."

Sec. 2. Article 11 of Chapter 44 of the General Statutes is repealed.

Sec. 3. This act shall become effective August 1, 1990.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 1416

CHAPTER 1048

AN ACT TO APPOINT PERSONS TO VARIOUS BOARDS AND COMMISSIONS UPON THE RECOMMENDATION OF THE PRESIDENT OF THE SENATE.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President of the Senate: and

Whereas, the President of the Senate has made recommendations;
Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Bruce D. Michelsen of Durham County is appointed to the Alarm Systems Licensing Board for a term to expire June 30, 1992. This is the categorical appointment for a licensee.

Sec. 2. J. Michael Plemmons of Buncombe County is appointed to the Board of Directors of the Western North Carolina Arboretum for a term to expire June 30, 1994.

Sec. 3. Gary M. Garlow of Lincoln County is appointed to the State Building Commission for a term to expire June 30, 1993. This is the categorical appointment for a Professional Engineer.

Sec. 4. Barry Shearer of Mecklenburg County is appointed to the Child Day Care Commission for a term to expire June 30, 1992. This is the categorical appointment for a nonprofit day care operator. Marilyn Lee of Stanly County is appointed to the Child Day Care Commission for a term to expire June 30, 1992. This is the categorical appointment for a for-profit day care operator.

Sec. 5. Patricia Louise Tippet of Macon County is appointed to the State Board of Cosmetic Art Examiners for a term to expire June 30, 1993.

Sec. 6. James P. Cain of Wake County and Daniel L. Brawley of New Hanover County are appointed to the Administrative Rules Review Commission for terms expiring June 30, 1992. James B. Mallory, III of Iredell County and George W. Jackson of Person County are appointed to the Administrative Rules Review Commission for terms expiring June 30, 1991.

Sec. 7. Donald Q. Pate of Wake County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term to expire June 30, 1992.

Sec. 8. Jimmy Lewis Moore of Alexander County is appointed to the North Carolina Medical Database Commission for a term to expire June 30, 1993. This is the categorical appointment for a representative of a business with fewer than 200 employees.

Sec. 9. Robert Bruce Hoyle of Rutherford County is appointed to the State Fire Commission for a term to expire June 30, 1993.

Sec. 10. Carl E. Worsley, Jr. of Dare County is appointed to the North Carolina Housing Partnership for a term to begin September 1, 1990, and expire August 31, 1993. This is an at-large categorical appointment. Betty Jean "BJ" Harris of Durham County is appointed to the North Carolina Housing Partnership for a term to begin effective immediately and expire August 31, 1990, and for a

term to begin September 1, 1990, and to expire August 31, 1993. This is an at-large categorical appointment. David J. Meachem of Stanly County is appointed to the North Carolina Housing Partnership for a term to begin September 1, 1990, and to expire August 31, 1993. This is the categorical appointment for an advocate of low-income housing. John Vereen of Brunswick County is appointed to the North Carolina Housing Partnership for a term beginning September 1, 1990, and expiring August 31, 1993. This is the categorical appointment for a representative of the League of Municipalities. Herschel Allen Redding of Forsyth County is appointed to the North Carolina Housing Partnership for a term to begin September 1, 1990, and to expire August 31, 1993. This is the categorical appointment for a representative of home building industry.

Sec. 11. Helen Euliss of Alamance County is appointed to the Teaching Fellows Commission for a term to expire June 30, 1992. Franz Holscher of Gaston County is appointed to the Teaching Fellows Commission for a term to expire June 30, 1993. Johnny W. Shepherd of Lenoir County is appointed to the Teaching Fellows Commission for a term to expire June 30, 1991.

Sec. 12. Andrew Benjamin (Ben) Lloyd, Jr. of Orange County is appointed to the North Carolina Milk Commission for a term to expire June 30, 1994. This is the categorical appointment for a Grade A milk producer whose primary interest is dairy farming and who sells his milk to a cooperative plant.

Sec. 13. Murphy Thomas (Tom) Wagner of Chatham County is appointed to the North Carolina Low-Level Radioactive Waste Management Authority for a term to expire June 30, 1994.

Sec. 14. Unless otherwise specified, all appointments made by this act are for terms to begin upon ratification.

Sec. 15. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 1448

CHAPTER 1049

AN ACT TO ALLOW CHEROKEE COUNTY TO ESTABLISH A COUNTY RECREATION AND SECURITY SERVICE DISTRICT, AND LEVY A TAX IN THAT DISTRICT FOR SERVICES OF THE DISTRICT, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. The Board of Commissioners of a county may, after approval of the voters of the area of that proposed district under Section 2 of this act, create within that county one or more special

districts under this act, except that no territory may be within more than one such special district. The special district shall be known as the " _____ Recreation and Security Service District", with the name of the county and/or geographical area and/or number of the district filled in by the ordinance.

Sec. 2. The Board of County Commissioners of a county may call an election to be conducted by the Board of Elections of that county in a special district established under Section 1 of this act for the purpose of submitting to the voters therein the single issue of establishing the district and levying and collecting annually a special ad valorem tax, at a rate not to exceed one dollar and fifty cents (\$1.50) per one hundred dollars (\$100.00) assessed valuation, on all taxable real and personal property in the special district for the purposes of Sections 7 through 13 of this act.

Sec. 3. (a) The board of commissioners shall hold a public hearing before calling any election under this act. Notice of the hearing shall state the date, time, and place of the hearing and its subject, and shall include a map of the proposed district. The notice shall be published in a newspaper of general circulation in the area at least once not less than one month before the date of the hearing.

(b) The board of commissioners shall not include within a district any area for which a property owners' association governing body with jurisdiction has adopted a written resolution requesting that the area not be included.

Sec. 4. The election shall be conducted in accordance with Chapter 163 of the General Statutes. The Board of Elections of a county shall determine and declare the results of said election and certify the same to the Board of County Commissioners of a county and the same shall thereupon be spread upon the minutes of the said board.

Sec. 5. The ballot shall contain the date of the election, the name of the proposed special district, and the following language:

- ☐ FOR creation of the _____ District and authorizing the levy of an ad valorem tax for services of that district.
- ☐ AGAINST creation of the _____ District and authorizing the levy of an ad valorem tax for services of that district."

The ballot shall contain the facsimile signature of the Chairman of the Board of Elections of that county.

Sec. 6. If a majority of the qualified voters voting at said election shall vote in favor of creating the district and the levying of a tax as aforesaid for the enforcement of the ordinance, as provided by this act, the Board of County Commissioners of that county shall upon receipt of the certified copy of the results of said election from the

Board of Elections adopt a resolution creating the district and shall file a copy of the said resolution so adopted with the Clerk of the Superior Court of the county.

Sec. 7. The District shall constitute a political subdivision of the State of North Carolina, and shall be a body corporate and politic, exercising public power. The special district is a public authority under the Local Government Budget and Fiscal Control Act.

Sec. 8. A county recreation and security service may provide for recreation, open space and common area acquisition and preservation, land-use planning and regulation, general administration, security, and public and local street improvement and maintenance services, facilities and functions.

Sec. 9. (a) The governing body of the district is the board of directors, consisting of not less than seven nor more than ten members who are permanent residents or property owners of the district. Each member shall be appointed for a two-year term, but the board of commissioners shall provide for staggered terms by appointing four members of the initial board for a one-year term. Terms shall begin on July 1 and end on June 30. If, on the date of adoption of the resolution creating the district, there are no nominations by the association or associations in accordance with subsection (b) of this section, the board of commissioners may make interim appointments to the board of directors; otherwise, the board of commissioners shall appoint the initial members in accordance with subsection (b). Vacancies shall be filled by the board of commissioners. No board member may serve more than two consecutive two-year terms. Initial terms of one year or completion of an unexpired term shall not count. Members of the board of directors who cease to be property owners in the district shall forfeit their seat on the board.

(b) If the district has one or more property owners' associations, the board of commissioners shall appoint the members nominated by the association or associations. If there is more than one property owners' association, the associations shall enter into a written agreement concerning the nominations to be made by each.

(c) At the organizational meeting of the board of directors each year, the first meeting on or after July 1, the members shall elect one of their members as chairman for a one-year term.

(d) The board of directors shall provide for at least four regular meetings each year, at a time and place to be set by resolution of the board. Special meetings may be called by written notice signed by the chairman. The board is a public body subject to the notice and other requirements of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes.

(e) A quorum of the board of directors shall be a majority of the members. Action of the board may be taken by a majority of those present and voting at any duly constituted meeting.

(f) The members of the board of directors shall receive no compensation for their services, but the board may provide for reimbursing members for actual expenses incurred in connection with district business.

(g) The board of directors may adopt bylaws and implement other rules and regulations not inconsistent with this Part or the resolution of the board of commissioners for the purpose of organizing itself and administering the responsibilities and purposes entrusted to it.

Sec. 10. (a) A board of commissioners may by resolution annex territory to a district upon finding that:

(1) The majority of the owners of all of the real property in the area to be annexed have petitioned for annexation; and

(2) The area to be annexed is contiguous to the district.

(b) The board shall hold a public hearing before adopting any resolution extending the boundaries of a service district. Notice of the hearing shall state the date, time, and place of the hearing and its subject. The notice shall be published in a newspaper of general circulation in the area at least once not less than one month before the hearing.

(c) The resolution extending the boundaries of the district shall become effective on the date provided in the resolution.

Sec. 11. A board of commissioners may by resolution abolish a district upon finding that the district board of directors has requested abolition and that there is no longer a need for the district. The board of commissioners shall hold a public hearing before adopting the resolution. Notice of the hearing shall state the date, time, and place of the hearing and its subject, and shall be published at least once not less than one month before the date of the hearing. The abolition of any district shall take effect at the end of a fiscal year following passage of the resolution, or as determined by the board of commissioners.

Sec. 12. (a) A County Recreation and Security Service District may levy property taxes within a district in order for the board of directors to finance, provide, or maintain the services provided by the district, at a rate not to exceed one dollar and fifty cents (\$1.50) per one hundred dollars (\$100.00) assessed valuation. The county shall collect the taxes levied and deliver one hundred percent (100%) of the proceeds to the board of directors or its finance officer monthly. The proceeds may be used only for services provided for in the district.

(b) The board of directors shall adopt an annual budget under the Local Government Budget and Fiscal Control Act, and shall levy the tax rate provided for in the budget to produce the necessary revenue, in accordance with the Machinery Act. The board of directors may submit an interim budget for the initial fiscal year, if the resolution creating the district becomes effective other than at the beginning of the fiscal year. Proration of taxes shall be as provided in this section. The budget may provide for a reasonable reserve or fund balance.

(c) Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the county as of the preceding January 1. Taxes for property annexed to the district, and taxes for all property in a newly established district, shall be prorated as provided in G.S. 160A-58.10, as if the area had been annexed to a municipality, except that property shall be subject to taxes for July or January if the district is created or property is annexed effective July 1 or January 1, respectively.

(d) District funds may be used to pay and discharge any valid debt of the district or any judgment rendered against it. District funds also may be used to provide for the defense of, and payment of civil judgments against, employees and officers or former employees or officers, under policies adopted by the board of directors. The board of directors shall have the right to enforce all valid contracts and agreements to which the district is a party and to collect all assessments, fees, charges, or other nontax revenues owed to the district and to use district funds for those purposes.

Sec. 13. (a) The district may provide for the authorized services by employing persons for those purposes and acquiring or constructing facilities, or by contracting with and appropriating district money to any person, association, or corporation. The district may control but not prohibit public access to streets and roads using security gates or other appropriate means. The district is not eligible to receive Powell Bill funds for streets and roads under G.S. 136-41.1. Security officers employed by or contracted for by the district may be company police as provided for in Chapter 74A of the General Statutes, or otherwise.

(b) The district may levy special assessments against benefitted property within the district for street and sidewalk purposes, in the same manner as a city may make special assessments under authority of Article 10 of Chapter 160A of the General Statutes. Whenever those statutes use words such as "city council" which are unique to cities, "board of directors" or the appropriate word or official in the case of a district shall be deemed to have been substituted.

(c) For the purpose of promoting and protecting the public health, safety and general welfare of the State, a district board of directors is authorized to establish zoning units and adopt and administer subdivision regulations. In exercising these powers, the board of directors shall have all rights, privileges, powers, and duties granted to counties under Parts 1, 2, and 3 of Article 18 of Chapter 153A of the General Statutes. However, the board of directors shall not be required to appoint any planning commission or board of adjustment. If neither a planning commission or board of adjustment is appointed, the board of directors shall have all the rights, privileges, powers, and duties of such bodies. Whenever those statutes use words such as "board of county commissioners" which are unique to counties, "board of directors" or the appropriate word or official in the case of a district shall be deemed to have been substituted. A district may enter into an agreement with any city or county for the establishment of a joint planning commission, or may contract for enforcement services.

Sec. 14. This act applies to Cherokee County only, and is supplemental to any private or public acts.

Sec. 15. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 603

CHAPTER 1050

AN ACT TO ALLOW CERTAIN INTERSTATE MOTOR CARRIERS TO FILE ANNUAL FUEL USE TAX REPORTS AND TO ALLOW CERTAIN USERS OF DIESEL FUEL TO FILE ANNUAL RATHER THAN QUARTERLY REPORTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.45 reads as rewritten:

" § 105-449.45. *Reports of carriers.*

~~Except as provided in G.S. 105-449.49, every motor carrier subject to the tax imposed by this Article shall on or before the last day of April, July, October and January of every year make to the Secretary such reports of its operations during the quarter of the year ending the last day of the preceding month as the Secretary may require and such other reports from time to time as the Secretary may deem necessary. When any person required to file a report as provided by this Article fails to file such report within the time prescribed by this Article, he shall be subject to a penalty of not more than fifty dollars (\$50.00) for the first failure, and not more than one hundred dollars (\$100.00) for any subsequent failure, and any penalty pursuant to this section shall~~

~~be assessed and collected by the Secretary in the same manner as is provided in this Article with respect to any tax deficiency, and shall be subject to all other applicable provisions relating to the assessment and collection of taxes pursuant to this Article. However, motor carriers are not required to make any reports with respect to vehicles used exclusively in intrastate operations in this State except as the Secretary may specifically from time to time require, but this is not to be construed to eliminate the requirements as to registration and identification markers with respect to all such vehicles as provided in G.S. 105-449.47.~~

(a) Quarterly Report. A motor carrier shall report its operations to the Secretary on a quarterly basis unless this subsection exempts the motor carrier from this requirement or permits the motor carrier to report on a different basis. A motor carrier is not required to file a quarterly report if:

- (1) All the motor carrier's operations during the quarter were made under a temporary permit issued under G.S. 105-449.49.
- (2) All the motor carrier's operations during the quarter were in this State.
- (3) The motor carrier has been granted permission to file an annual report under subsection (b).

A quarterly report covers a calendar quarter and is due by the last day in April, July, October, and January.

(b) Annual Report. The Secretary may authorize a motor carrier whose estimated annual tax liability under this Article does not exceed two hundred dollars (\$200.00) to file an annual report of its operations. An annual report covers a fiscal year beginning on July 1 and ending on the following June 30 and is due by July 31 after the end of a fiscal year. To file an annual report, a motor carrier must apply to the Secretary for permission to file on an annual basis. An application must be submitted by the date set by the Secretary. Once granted permission, a motor carrier may continue to file an annual report until notified by the Secretary to file a quarterly report.

(c) Other Reports. A motor carrier shall file with the Secretary other reports concerning its operations that the Secretary requires.

(d) Penalties. A motor carrier that fails to file a report under this section by the required date is subject to a penalty of up to fifty dollars (\$50.00) for the first failure and of up to one hundred dollars (\$100.00) for a subsequent failure."

Sec. 2. G.S. 105-449.10(a) reads as rewritten:

"(a) Each user-seller or user licensed under this Article shall keep ~~such~~ records and make ~~such~~ reports to the Secretary as shall be prescribed under regulations promulgated in accordance with

~~regulations adopted by the Secretary. Such~~ The records and reports shall ~~be such as are adequate to show all purchases, sales, deliveries~~ deliveries, and use of fuel by ~~such seller~~ the user-seller or user, user. A licensed user that is not authorized by this subsection to file an annual report shall file a quarterly report ~~provided that persons licensed as users shall file such reports quarterly~~ on or before the last day of the month immediately following the end of the quarter. A licensed user that uses fuel only in a motor vehicle operated in this State or that has been granted permission to file an annual report under G.S. 105-449.45 shall file an annual report for a calendar year by January 1 following the end of the year. A user-seller shall file a report as required by G.S. 105-449.21."

Sec. 3. This act shall become effective January 1, 1991.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 2263

CHAPTER 1051

AN ACT TO REQUIRE REPORTING TO THE DEPARTMENT OF ADMINISTRATION OF PARTICIPATION BY DISADVANTAGED BUSINESSES IN PUBLIC PROCUREMENT CONTRACTS AND TO REQUIRE THE DEPARTMENT TO COLLECT, COMPILE, AND REPORT THE DATA; AND TO CLARIFY THE PUBLIC BIDDING LAW FOR SINGLE-PRIME AND SEPARATE-PRIME COMPETITIVE BIDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-48 reads as rewritten:

"§ 143-48. *State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose; required annual reports.*

(a) It is the policy of this State to encourage and promote the use of small, minority, physically handicapped and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small, minority, physically handicapped and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.

(b) Every governmental entity required by statute to use the services of the Department of Administration in the purchase of goods and services and every private, nonprofit corporation other than an

institution of higher education or a hospital that receives an appropriation of five hundred thousand dollars (\$500,000) or more during a fiscal year from the General Assembly shall report to the Department of Administration annually on what percentage of its contract purchases of goods and services, through term contracts and open-market contracts, were from minority-owned businesses, what percentage from female-owned businesses, and what percentage from disabled-owned businesses. The same governmental entities shall include in their reports what percentages of the contract bids for such purchases were from such businesses. The Department of Administration shall provide instructions to the reporting entities concerning the manner of reporting and the definitions of the businesses referred to in this act, provided that, for the purposes of this act:

- (1) A business in one of the categories above means one:
 - a. In which at least fifty-one percent (51%) of the business, or of the stock in the case of a corporation, is owned by one or more persons in the category; and
 - b. Of which the management and daily business operations are controlled by one or more persons in the category who own it; and
- (2) A female or a disabled person is not a minority, unless the female or disabled person is also a member of one of the minority groups described in G.S. 143-128(c)(2)a through d; and
- (3) A disabled person means a 'handicapped person' as defined in G.S. 168A-3(4).

The Department of Administration shall collect and compile the data described in this section and report it annually to the General Assembly."

Sec. 2. The Department of Administration shall include in its report to the General Assembly in 1991 any data on participation by businesses described in Section 1 of this act that has been reported to it from governmental entities during previous years but that the Department has never reported to a standing committee of the General Assembly.

Sec. 3. The Department shall use any moneys available to it that are necessary to implement Sections 1 and 2.

Sec. 4. G.S. 143-132 reads as rewritten:

"§ 143-132. Minimum number of bids for public contracts.

(a) No contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly

engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received.

(b) For purposes of contracts bid in the alternative between the separate prime and single-prime contracts, pursuant to G.S. 143-128(b), a bid submitted by a single-prime contractor shall constitute a competitive bid in each of the four subdivisions or branches of work listed in ~~G.S. 143-128(a)~~, G.S. 143-128(a), and each full set of separate prime bids shall constitute a competitive single-prime bid in meeting the requirements of subsection (a) of this section.

(c) The State Building Commission shall develop guidelines no later than January 1, 1991 governing the opening of bids pursuant to this Article. These guidelines shall be distributed to all public bodies subject to this Article. The guidelines shall not be subject to the provisions of Chapter 150B of the General Statutes."

Sec. 5. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

H.B. 2191

CHAPTER 1052

AN ACT TO INCREASE THE MAXIMUM FINE FOR PARKING IN A HANDICAPPED PARKING SPACE AND TO REQUIRE SIGNS DESIGNATING HANDICAPPED PARKING SPACES TO STATE THE PENALTY FOR PARKING IN THE SPACE IN VIOLATION OF THE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-37.6(f)(1) reads as rewritten:

"(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of ~~twenty-five dollars (\$25.00)~~ at least fifty dollars (\$50.00) but not more than one hundred dollars (\$100.00) and whenever evidence shall be presented in any court of the fact that any automobile,

truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be *prima facie* evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division of Motor Vehicles. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section."

Sec. 2. G.S. 20-37.6(f)(2) reads as rewritten:

"(2) A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of ~~fifty dollars (\$50.00)~~ at least fifty dollars (\$50.00) but not more than one hundred dollars (\$100.00) and whenever evidence shall be presented in any court of the fact that any such nonconforming sign or markings are being used it shall be *prima facie* evidence in any court in the State of North Carolina that the person, firm, or corporation with ownership of the property where said nonconforming signs or markings are located is responsible for violation of this section. Building inspectors and others responsible for North Carolina State Building Code violations specified in G.S. 143-138(h) where such signs are required by the Handicapped Section of the North Carolina State Building Code, may cause a citation to be issued for this violation and may also initiate any appropriate action or proceeding to correct such violation."

Sec. 3. G.S. 20-37.6(d) reads as rewritten:

"(d) Designation of Parking Places. -- Designation of parking spaces for the physically handicapped and the visually impaired on streets and in other areas, including public vehicular areas specified in G.S. 20-4.01(32), shall be by the use of sign R7-8 for multiple parking spaces as shown in the Manual on Uniform Traffic Control Devices, or sign R7-8a for single parking spaces as shown in the N.C. Department of Transportation Supplement to the Manual on Uniform Traffic Control Devices. ~~Nonconforming signs in use prior to July 1, 1979, shall not constitute a violation of G.S. 20-37.6(e)(4) during their useful lives, which shall not be extended by other means than normal maintenance. These nonconforming signs shall be removed and be replaced with conforming signs before January 1, 1989; provided that a sign or symbol painted on the surface of a parking space need not be removed when a conforming sign is erected.~~ Signs R7-8 and R7-8a shall state the maximum penalty for

parking in a parking space for the physically handicapped or visually impaired in violation of the law."

Sec. 3.1. G.S. 20-37.6(d1) reads as rewritten:

"(d1) Unique Properties. -- The owner of private property which contains a public vehicular area, on which is to be designated one or more parking spaces for the physically handicapped and the visually impaired, may file a written certification, on a form supplied by the Department of Transportation, that signs conforming to G.S. 20-37.6(d) would not be compatible with the unique visual character of the property. Upon filing of the certification with the Department of Transportation, the owner may cause to be erected signs of materials and colors different from signs R7-8 and R7-8a. The signs shall be the same size and shape as signs R7-8 or R7-8a, as appropriate, with the same letters, words, ~~numbers and symbols,~~ numbers, and symbols, except for the statement of the maximum penalty for parking in a parking space for the physically handicapped or visually impaired in violation of the law. Such signs shall be deemed to conform to G.S. 20-37.6(d)."

Sec. 4. Sections 1 and 2 of this act shall become effective October 1, 1990, and shall apply to infractions committed on or after that date. Sections 3 and 3.1 is effective upon ratification and applies to signs placed in service after December 31, 1990.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.B. 423

CHAPTER 1053

AN ACT TO PROVIDE FOR CONFIDENTIALITY OF THE PROCEEDINGS OF QUALITY ASSURANCE COMMITTEES IN MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-191 is amended by adding the following new subsection:

"(e) For purposes of peer review functions only:

- (1) A member of a duly appointed quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee; and
- (2) The proceedings of a quality assurance committee, the records and materials it produces, and the material it

considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records" defined,' and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and nothing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review process, but cannot be asked about his testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings."

Sec. 2. Chapter 122C is further amended by adding a new section to read:

"§ 122C-30. Peer review committee; immunity from liability; confidentiality.

For purposes of peer review functions of a hospital licensed under the provisions of this Chapter:

- (1) A member of a duly appointed peer review committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee; and
- (2) Proceedings of a peer review committee, the records and materials it produces, and the material it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records" defined,' and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of

professional health services that results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and nothing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review process, but cannot be asked about his testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings."

Sec. 3. This act shall become effective October 1, 1990, and shall apply to proceedings conducted pursuant to this act on or after this date.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 498

CHAPTER 1054

AN ACT TO IMPROVE THE LAWS RELATING TO THE REPORTING AND INVESTIGATION OF INSURANCE FRAUD AND THE FINANCIAL CONDITION OF INSURANCE LICENSEES, THE LAWS RELATING TO FRAUDULENT INSURANCE CLAIMS, THE LAWS RELATING TO EMBEZZLEMENT AND THE REPORTING THEREOF, AND THE LAWS RELATING TO FALSE STATEMENTS BY PERSONS IN THE BUSINESS OF INSURANCE; AND TO PROVIDE FOR THE COMPLETION OF FIRE INCIDENT REPORTS BY FIRE DEPARTMENTS AND THE AVAILABILITY OF SUCH REPORTS TO INSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-2-160 reads as rewritten:

~~"§ 58-2-160. Immunity from liability for reporting insurance fraud.~~

~~(a) For the purpose of this section, a "fraudulent insurance act" is committed by any person who, knowingly and with the intent to defraud: (1) presents, causes to be presented, or prepares with the knowledge or belief that it will be presented to or by an insurer, purported insurer, broker, or any agent or employee thereof, any written statement as part of an insurance policy, or in support of an insurance policy, an application for the issuance of an insurance policy, or the rating of an insurance policy, or a claim for payment or other benefit pursuant to an insurance policy, that he knows to contain materially false information concerning any material fact; or (2) conceals information concerning any material fact.~~

~~(b) In the absence of fraud or bad faith, no person is subject to civil liability for defamation for filing reports or furnishing other information, without malice, required by Articles 1 through 64 of this Chapter or required by the Commissioner under the authority granted in Articles 1 through 64 of this Chapter; and no cause of action for defamation arises against such person (1) for any information relating to suspected fraudulent insurance acts furnished to or received from the Commissioner, his designee, or law enforcement officials or their agents and employees; (2) for any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of Articles 1 through 64 of this Chapter; or (3) for any such information furnished in reports to the Commissioner or his staff, the Attorney General or his staff, the NAIC, or any organization established to detect and prevent fraudulent insurance acts, or their agents, employees or designees; nor shall the Commissioner or his staff, the Attorney General or his staff, or any representative of the NAIC, acting without malice, in the absence of fraud or bad faith, be subject to liability for defamation, and no cause of action for defamation arises against such person for the publication of any confidential report or bulletin related to the official activities of the Commissioner, the Attorney General, or the NAIC. Nothing in this section abrogates or modifies any common law or statutory privilege or immunity enjoyed by any person.~~

~~(c) During the course of an investigation of a suspected fraudulent insurance act, the Commissioner may personally or through his representative request any insurer to furnish copies of any information relative to that suspected act that is in the insurer's possession. The insurer shall release the information requested and cooperate with the Commissioner or his representative pursuant to this subsection. The information shall include without limitation to:~~

- ~~(1) Any insurance policy and application therefor relevant to a suspected fraudulent insurance act under investigation;~~
- ~~(2) Policy premium payment records;~~
- ~~(3) History of previous loss claims made by the insured;~~
- ~~(4) Material relating to the investigation of the suspected act, including statements of any person, proof of loss, and any other relevant evidence.~~

" § 58-2-160. Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees: immunity from liability.

(a) As used in this section, 'Commissioner' includes an employee, agent, or designee of the Commissioner. A person, or an employee or agent of that person, acting without actual malice, is not subject to civil liability for libel, slander, or any other cause of action by virtue of furnishing to the Commissioner under the requirements of law or at the direction of the Commissioner reports or other information relating to (i) any known or suspected fraudulent insurance or reinsurance claim, transaction, or act or (ii) the financial condition of any licensee. In the absence of actual malice, members of the NAIC, their duly authorized committees, subcommittees, task forces, delegates, and employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, or disseminating the information developed from filings of financial statements or examinations of licensees are not subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected from such filings or examinations.

(b) The Commissioner, acting without actual malice, is not subject to civil liability for libel or slander by virtue of an investigation of (i) any known or suspected fraudulent insurance or reinsurance claim, transaction, or act or (ii) the financial condition of any licensee; or by virtue of the publication or dissemination of any official report related to any such investigation, which report is published or disseminated in the absence of fraud, bad faith, or actual malice on the part of the Commissioner. The Commissioner is not subject to civil liability in relation to the collecting, reviewing, analyzing, or dissemination of information that is developed by the NAIC from the filing of financial statements with the NAIC or from the examination of insurers by the NAIC and that is communicated to the Commissioner, including any investigation or publication or dissemination of any report or other information in relation thereto, which report is published or disseminated in the absence of fraud, bad faith, negligence, or actual malice on the part of the Commissioner.

(c) During the course of an investigation of (i) a known or suspected fraudulent insurance or reinsurance claim, transaction, or

act or (ii) the financial condition of any licensee, the Commissioner may request any person to furnish copies of any information relative to the (i) known or suspected claim, transaction, or act or (ii) financial condition of the licensee. The person shall release the information requested and cooperate with the Commissioner pursuant to this section."

Sec. 2. Article 2 of Chapter 58 of the General Statutes is amended by adding the following new sections to read:

"§ 58-2-161. False statement to procure benefit of insurance policy or certificate.

(a) For the purposes of this section 'insurer' includes an entity under Articles 65 through 67 of this Chapter and includes the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes.

(b) Any person who willfully and knowingly presents or causes to be presented a false or fraudulent claim, or any proof in support of such claim, to an insurer for the payment of a loss or other benefits under any insurance policy, certificate, or coverage; or prepares, makes, or subscribes to a false or fraudulent account, certificate, affidavit, proof of loss, or other documents or writing, to an insurer, with the intent that the same may be presented or used in support of such claim, shall be guilty of a felony and, upon conviction, shall be punished as a Class I felon.

"§ 58-2-162. Embezzlement by insurance agents, brokers, or administrators.

If any insurance agent, broker, or administrator embezzles or fraudulently converts to his own use, or, with intent to use or embezzle, takes, secretes, or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies any money, negotiable instrument, or other consideration received by him in his performance as an agent, broker, or administrator, he shall be punished as a Class H felon.

"§ 58-2-163. Report to Commissioner.

Whenever any insurance company, or employee or representative of such company, or any other person licensed or registered under Articles 1 through 67 of this Chapter knows or has reasonable cause to believe that any other person has violated G.S. 58-2-161, 58-2-162, 58-2-180, 58-8-1, or 58-24-180(e), or whenever any insurance company, or employee or representative of such company, or any other person licensed or registered under Articles 1 through 67 of this Chapter knows or has reasonable cause to believe that any entity licensed by the Commissioner is financially impaired, it is the duty of such person, upon acquiring such knowledge, to notify the Commissioner and provide the Commissioner with a complete

statement of all of the relevant facts and circumstances. Such report is a privileged communication, and when made without actual malice does not subject the person making the same to any liability whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of any licensee who willfully fails to comply with this section."

Sec. 3. G.S. 58-24-180 is amended by adding a new subsection to read:

"(e) Any person who willfully makes any false statement under oath in any verified report or declaration that is required by law from fraternal benefit societies, is guilty of perjury under G.S. 14-209."

Sec. 4. G.S. 58-8-1 reads as rewritten:

"§ 58-8-1. Mutual insurance companies organized; requisites for doing business.

No policy may be issued by a mutual company until the president and the secretary of the company have certified under oath that every subscription for insurance in the list presented to the Commissioner for approval is genuine, and made with an agreement with every subscriber for insurance that he will take the policies subscribed for by him within 30 days after the granting of a license to the company by the Commissioner to issue policies. Any person making a false oath in respect to the certificate is guilty of perjury under G.S. 14-209."

Sec. 5. G.S. 58-2-180 reads as rewritten:

"§ 58-2-180. Punishment for making false statement.

~~If any insurance company in its annual or other statement required by law shall wilfully misstate the facts, the insurance company and the person in any financial or other statement required by this Chapter willfully misstates information, that person making oath to or subscribing the statement shall be is guilty of a misdemeanor perjury under G.S. 14-209; and, upon conviction, shall be severally punished by and the entity on whose behalf the person made the oath or subscribed the statement is subject to a fine imposed by the court of not less than two thousand dollars (\$2,000) nor more than five ten thousand dollars (\$5,000) (\$10,000)."~~

Sec. 6. G.S. 14-96, 14-96.1, 14-213, 14-214, 14-215, and 14-216 are repealed.

Sec. 7. Article 79 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-79-45. Fire incident reports.

(a) Whenever a fire department responds to a fire, the chief of that department shall complete or cause to be completed a fire incident report, which report shall be on a form prescribed by the Department of Insurance. When such report is made without fraud, bad faith, or

actual malice, the person making the report is not subject to liability for libel or slander.

(b) The fire department shall forward a copy of the completed form to the fire marshal of the county in which the fire occurred. If there is no fire marshal in that county, the fire department shall forward a copy of the report to the county commissioners. The fire department shall retain the original of the report. The fire department and the fire marshal or county commissioners to whom reports are sent shall retain the reports for a period of five years.

(c) At the request of any person, the county fire marshal or county commissioners shall provide such person, for a reasonable copying charge, a certified copy of the report."

Sec. 8. In the event any provision of this act is held to be invalid by any court of competent jurisdiction, the court's holding as to that provision shall not affect the validity or operation of other provisions of this act; and to that end the provisions of this act are severable.

Sec. 9. This act is effective upon ratification except for Sections 2 through 6 of this act which shall become effective October 1, 1990, and except for Section 7 of this act, which shall become effective September 1, 1990. Prosecutions for offenses occurring before October 1, 1990, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 1412

CHAPTER 1055

AN ACT TO PROVIDE FOR REGISTRATION OF AND REPORTING BY MULTIPLE EMPLOYER WELFARE ARRANGEMENTS AND TO AMEND THE FINANCIAL RESPONSIBILITY REQUIREMENTS FOR HEALTH PLAN ADMINISTRATORS.

The General Assembly of North Carolina enacts:

Section 1. Article 49 of Chapter 58 of the General Statutes is amended by adding the following new sections to read:

"§ 58-49-30. Multiple employer welfare arrangements; definition; registration; reports to the Commissioner.

(a) As used in this section, the term 'multiple employer welfare arrangement' or 'MEWA' means that term as defined in Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §

1002(40)(A), as amended, that meets either or both of the following criteria:

- (1) One or more of the employer members of the MEWA is either domiciled in this State or has its principal headquarters or principal administrative office in this State.
- (2) The MEWA solicits an employer that is domiciled in this State or that has its principal headquarters or principal administrative office in this State.

(b) Every MEWA and every administrator of a MEWA shall register with the Commissioner in order to do business in this State. Such registration must be renewed each year thereafter on the anniversary date of the initial registration.

(c) Each insurer licensed to do business in this State that administers a MEWA shall, in lieu of registration, provide the Commissioner with such information regarding the insurer's administrative services contract or contracts with such MEWA or MEWAs that the Commissioner requires. No unlicensed insurer shall administer any MEWA.

(d) All MEWAs shall, at the time they file reports with the U.S. Department of Labor pursuant to 29 U.S.C. §§ 1022 and 1023, file verified copies of such reports with the Commissioner. The provisions of G.S. 58-2-180 apply to the making of such reports.

(e) The provisions of this section are in addition to all other statutory provisions of Articles 1 through 64 of this Chapter and do not supersede, amend, or repeal such provisions."

Sec. 2. G.S. 58-50-40(a) reads as rewritten:

"(a) As used in this section and in G.S. 58-50-45, the term 'group health insurance' means: (1) any policy described in G.S. 58-51-75, 58-51-80, or 58-51-90; (2) any group insurance certificate or group subscriber contract issued by a hospital service corporation pursuant to Articles 65 and 66 of this Chapter; ~~or~~ (3) any health care plan provided or arranged by a health maintenance organization pursuant to Article 67 of this Chapter; or (4) any multiple employer welfare arrangement as defined in G.S. 58-49-30(a). As used in this section and in G.S. 58-50-45, the term 'insurance fiduciary' means any person, employer, principal, agent, trustee, or third party administrator, who is responsible for the payment of group health or group life insurance premiums. As used in this section and in G.S. 58-50-45, 'premiums' includes contributions to a multiple employer welfare arrangement."

Sec. 3. G.S. 58-50-45(b) reads as rewritten:

"(b) The notice required by subsection (a) of this section shall be printed in 10 point type and shall read as follows:

'UNDER NORTH CAROLINA GENERAL STATUTE SECTION 58-50-40, NO PERSON, EMPLOYER, PRINCIPAL, AGENT, TRUSTEE, OR THIRD PARTY ADMINISTRATOR, WHO IS RESPONSIBLE FOR THE PAYMENT OF GROUP HEALTH OR LIFE INSURANCE OR HEALTH CARE PLAN PREMIUMS, FOR WHICH PAYMENT WAGES OR OTHER FUNDS ARE WITHHELD FROM THE PERSONS INSURED, SHALL: (1) CAUSE THE CANCELLATION OR NONRENEWAL OF GROUP HEALTH OR LIFE INSURANCE, HOSPITAL, MEDICAL, OR DENTAL SERVICE PLAN, MULTIPLE EMPLOYER WELFARE ARRANGEMENT, OR HEALTH CARE PLAN COVERAGES AND THE CONSEQUENTIAL LOSS OF THE COVERAGES OF THE PERSONS INSURED, BY WILLFULLY FAILING TO PAY SUCH PREMIUMS IN ACCORDANCE WITH THE TERMS OF THE INSURANCE OR PLAN CONTRACT, AND (2) WILLFULLY FAIL TO DELIVER, AT LEAST 30 DAYS PRIOR TO THE TERMINATION OF SUCH COVERAGES, TO EACH NAMED INSURED A WRITTEN NOTICE OF THE PERSON'S INTENTION TO STOP PAYMENT OF PREMIUMS. THIS WRITTEN NOTICE MUST ALSO CONTAIN A NOTICE TO THE NAMED INSUREDS OF THEIR RIGHTS TO HEALTH INSURANCE CONVERSION POLICIES UNDER ARTICLE 53 OF GENERAL STATUTES CHAPTER 58 AND THEIR RIGHTS UNDER THE FEDERAL CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA). VIOLATION OF THIS LAW IS A FELONY IF THE INSURANCE IS, IN WHOLE OR IN PART, PAID FOR OUT OF WAGES WITHHELD OR OTHER FUNDS COLLECTED FROM THE PERSONS INSURED. ANY PERSON VIOLATING THIS LAW IS ALSO SUBJECT TO A COURT ORDER REQUIRING THE PERSON TO COMPENSATE PERSONS INSURED FOR EXPENSES OR LOSSES INCURRED AS A RESULT OF THE TERMINATION OF THE INSURANCE.'"

Sec. 3.1. G.S. 58-50-40(g) reads as rewritten:

"(g) In the notice required by subsection (b) of this section, the insurance fiduciary shall also notify the persons insured of their rights to health insurance conversion policies under Article 53 of this Chapter and their rights under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA)."

Sec. 4. G.S. 58-56-60 reads as rewritten:

"§ 58-56-60. *Certificate of registration required.*

(a) No person shall act as or hold himself out to be an administrator in this State, other than an adjuster licensed in this State for the kinds of insurance for which he is acting as an administrator, unless he holds a certificate of registration as an administrator issued

by the Commissioner. Such certificate shall be for a term of one year and shall be renewable. Failure to hold such certificate shall subject the administrator to the provisions of G.S. 58-2-70. The certificate shall be issued by the Commissioner to an administrator unless the Commissioner, after due notice and hearing, determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation; has violated any insurance statute or administrative rule; or has had a previous application for an insurance license denied for cause within the preceding five years.

(b) Each application for the issuance or renewal of a certificate shall be accompanied by a filing fee of ~~twenty dollars (\$20.00)~~ one hundred dollars (\$100.00) and evidence of maintenance of a surety bond, errors and omissions liability insurance, or other security, of a type and in an amount to be determined by rules adopted by the Commissioner.

(c) Any person who violates this Article is subject to the provisions of G.S. 58-2-70."

Sec. 5. The Commissioner of Insurance may appoint a committee in accordance with G.S. 58-2-30(a) to study the role of state regulation of multiple employer welfare arrangements and submit its findings and recommendations, including any recommended legislation, to the 1991 General Assembly on or before February 1, 1991.

Sec. 6. In the event any provision of this act is held to be invalid by any court of competent jurisdiction, the court's holding as to that provision shall not affect the validity or operation of other provisions of this act; and to that end the provisions of this act are severable.

Sec. 7. This act is effective upon ratification. The registration required by G.S. 58-49-30 shall be made within 60 days after the effective date of this act for those MEWAs and administrators of MEWAs in operation on the effective date.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 1450

CHAPTER 1056

AN ACT RELATING TO THE MANNER OF FILLING
VACANCIES IN THE OFFICE OF REGISTER OF DEEDS OF
ASHE, SURRY, WATAUGA, AND GASTON COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-5(a1) reads as rewritten:

"(a) When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. If the register of deeds were elected as the nominee of a political party, the board of county commissioners shall consult the county executive committee of that political party before filling the vacancy and shall appoint the person recommended by that committee, if the party makes a recommendation within 30 days of the occurrence of the vacancy. Counties subject to this subsection are not subject to subsection (a). This subsection shall apply only in the following counties: Alamance, Alleghany, Ashe, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Davidson, Davie, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Surry, Transylvania, Wake, Watauga, and Yancey."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 1575

CHAPTER 1057

AN ACT TO INCREASE THE FEE FOR FILING A CORPORATION'S ANNUAL REPORT WITH THE SECRETARY OF STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-1-22, as enacted by Chapter 265 of the 1989 Session Laws and amended by Chapter 714 of the 1989 Session Laws, reads as rewritten:

"§ 55-1-22. *Filing, service, and copying fees.*

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

Document	Fee
(1) Articles of incorporation	\$100.00
(2) Application for reserved name	10.00
(3) Notice of transfer of reserved name	10.00
(4) Application for registered name	10.00
(5) Application for renewal of registered name	10.00
(6) Corporation's statement of change of registered agent or registered office or both	5.00

(7) Agent's statement of change of registered office for each affected corporation	5.00
(8) Agent's statement of resignation	No fee
(9) Designation of registered agent or registered office or both	5.00
(10) Amendment of articles of incorporation	50.00
(11) Restated articles of incorporation with amendment of articles	10.00 50.00
(12) Articles of merger or share exchange	50.00
(13) Articles of dissolution	30.00
(14) Articles of revocation of dissolution	10.00
(15) Certificate of administrative dissolution	No fee
(16) Application for reinstatement following administrative dissolution	25.00
(17) Certificate of reinstatement	No fee
(18) Certificate of judicial dissolution	No fee
(19) Application for certificate of authority	200.00
(20) Application for amended certificate of authority	50.00
(21) Application for certificate of withdrawal	10.00
(22) Certificate of revocation of authority to transact business	No fee
(23) Annual report	5.00 10.00
(24) Articles of correction	10.00
(25) Application for certificate of existence or authorization	5.00
(26) Any other document required or permitted to be filed by this act	10.00.

(b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is served on him under this act. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) Fifty cents (\$.50) a page for copying; and
- (2) Five dollars (\$5.00) for the certificate."

Sec. 2. This act becomes effective January 1, 1991.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 1615

CHAPTER 1058

AN ACT TO AMEND THE EXCEPTIONAL CHILDREN'S
APPEALS PROCESS, TO PRESERVE FEDERAL FUNDS, AND
TO SAVE THE STATE REPLACEMENT FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-116 reads as rewritten:

" § 115C-116. *Notice of decisions; mediation, administrative review, and judicial review of disagreements.*

(a) Prior Notice. -- The parent, guardian, or surrogate parent of a child shall be notified promptly when the local educational agency proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of a child as a child with special needs. The written notice shall contain a full explanation of all the procedural safeguards available to the parent, guardian, or surrogate parent including the right to review the proposed decision, and a statement offering the parent, guardian, or surrogate parent the opportunity for mediation. The local educational agency shall document that all required notices have been sent to and received by parents, guardians, or surrogate parents.

(b) Mediation. -- Mediation of disputes or disagreements regarding the identification of children with special needs and the provision of special education for children with special needs prior to formal administrative review is encouraged. If a request for formal administrative review has not been filed, the superintendent, upon the request of a parent, guardian, or surrogate parent, shall meet, or designate an assistant or associate superintendent to meet, with the parent, guardian, or surrogate parent to attempt to resolve the dispute or disagreement. The meeting shall be informal and the General Assembly intends that the meeting shall be nonadversarial, as required by G.S. 150B-22.

(c) Right of Review. -- The parent, guardian, or surrogate parent may obtain review of proposed decisions on the following grounds:

- (1) The child has not been identified or has been incorrectly identified as a child with special needs;
- (2) The child's individualized education plan is not appropriate to meet his needs;
- (3) The child's individualized education plan is not being implemented; or

- (4) The child is otherwise being denied a free, appropriate education.

In addition, a local educational agency may obtain review as provided by this section if a parent, guardian, or surrogate parent refuses to consent to the evaluation of the child for the purpose of determining whether the child is a child with special needs or for the purpose of developing a free appropriate educational program for the child.

(d) Administrative Review. -- Except as otherwise provided in this section, the administrative review shall be initiated and conducted in accordance with Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) Scope of Review. -- ~~Notwithstanding the provisions of G.S. 150B-23(a) and G.S. 150B-33(b)(9), the~~ The issues for review shall be limited to those set forth in subsection (c).

(f) Venue of Hearing. -- ~~Notwithstanding the provisions of G.S. 150B-24, the~~ The hearing shall be conducted in the county where the child attends school or is entitled to enroll pursuant to G.S. 115C-366.

(g) Hearing Closed. -- ~~Notwithstanding the provisions of G.S. 150B-23(e), the~~ The hearing shall be closed to the public unless the parent, guardian, or surrogate parent, ~~prior to the beginning of the hearing,~~ requests in writing that the hearing be open to the public.

(h) ~~Recommended Decision. -- Following the hearing, the administrative law judge shall make a recommended decision to the State Board of Education. The recommended decision shall conform to and be prepared in accordance with G.S. 150B-34.~~ Decision of the Administration Law Judge. -- Following the hearing, the administrative law judge shall make a decision regarding the issues set forth in subsection (c). The decision shall contain findings of fact and conclusions of law. Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final and not subject to further review unless appealed to the Review Officer as provided in subsection (i). A copy of the administrative law judge's decision shall be served upon each party and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the availability of appeal and the 30-day limitations period for appeal as set forth in subsection (i).

(i) ~~Final Decision by the State Board of Education. -- The final decision shall be made by the State Board of Education in accordance with G.S. 150B-36. In its discretion, the State Board may appoint a panel of at least two members of the Board to make the final decision for and on its behalf in accordance with G.S. 150B-36, and if the Board elects to exercise its discretion the decision of the panel shall be~~

~~the final decision.~~ Review by Review Officer. -- Any party aggrieved by the decision of the administrative law judge may appeal that decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the Superintendent of Public Instruction. The State Superintendent of Public Instruction shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. A Review Officer must be an educator or other professional who is knowledgeable about special education and who possesses such other qualifications as may be established by the State Board of Education.

No person may be appointed as a Review Officer if that person is an employee of an agency that has been involved in the education or care of the child whose parents have filed the petition (including an employee or official of the State Department of Education or the State Board of Education) or if the person is or has been employed by the local Board of Education responsible for the education or care of the child whose parents have filed the petition. The decision of the Review Officer shall contain findings of fact and conclusions of law and becomes final unless an aggrieved party brings a civil action pursuant to subsection (k). A copy of the decision shall be served upon each party and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitations period for filing a civil action pursuant to subsection (k).

(j) Power to Enforce Final Decision. -- The State Board shall have the power to enforce ~~its~~ the final decision of the administrative law judge, if not appealed pursuant to subsection (i), or the final decision of the Review Officer, by ordering a local educational agency:

- (1) To provide a child with ~~an~~ appropriate education;
- (2) To place a child in a private school that is approved to provide special education and that can provide the child an appropriate education; or
- (3) To reimburse parents for reasonable private school placement costs in accordance with the provisions of G.S. 115C-115 ~~in the event it determines~~ when it is determined that the local educational agency did not offer or provide the child with ~~an~~ appropriate education and the private school in which the parent, guardian, or surrogate parent placed the child was an approved school and did provide the child an appropriate education.

(k) ~~Judicial Review.~~ Right to File Civil Action. -- Any party aggrieved by the State Board's decision may seek judicial review in the State courts as provided in Chapter 150B, Article 4 of the General Statutes, or in federal court as provided in 20 U.S.C. § 1415.

decision of the Review Officer may institute a civil action in State or federal court as provided in 20 U.S.C. § 1415 within 30 days after receipt of notice of the decision.

(l) Change in Placement. -- Upon the filing of a petition, no change may be made in the child's status or program by school officials during the period of the administrative review or subsequent judicial review, unless the parent, guardian, or surrogate parent gives written consent."

Sec. 2. This act shall become effective October 1, 1990, and shall apply to all petitions filed on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 1314

CHAPTER 1059

AN ACT TO AUTHORIZE FLEXIBLE COMPENSATION PLANS
FOR STATE AGENCY EMPLOYEES, UNIVERSITY
EMPLOYEES, COMMUNITY COLLEGE EMPLOYEES, AND
PUBLIC SCHOOL EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Article 23 of Chapter 115C of the General Statutes is amended by adding a new section to read:

" § 115C-341.1. *Flexible Compensation Plan.*

Notwithstanding any other provisions of law relating to the salaries of employees of local boards of education, the State Board of Education is authorized to provide a plan of flexible compensation to eligible employees of local school administrative units for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the State Board may authorize local school administrative units to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. Should the State Board decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process."

Sec. 2. Article 2 of Chapter 115D of the General Statutes is amended by adding a new section to read:

" § 115D-25.1. Flexible Compensation Plan.

Notwithstanding any other provisions of law relating to the salaries of employees of community college boards of trustees, the State Board of Community Colleges is authorized to provide a plan of flexible compensation to eligible employees of constituent institutions for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the State Board may authorize constituent institutions to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. Should the State Board decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process."

Sec. 3. Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

" § 116-17.1. Flexible Compensation Plan.

Notwithstanding any other provisions of law relating to the salaries of employees of The University of North Carolina, the Board of Governors of The University of North Carolina is authorized to provide a plan of flexible compensation to eligible employees of constituent institutions for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the Board of Governors may authorize constituent institutions to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. Should the Board of Governors decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process."

Sec. 4. G.S. 143-34.1 reads as rewritten:

" § 143-34.1. Payrolls submitted to the Director of the Budget; approval of payment of vouchers; payment of required employer salary-related

contributions for retirement benefits, death benefits, disability salary continuation and Social Security; support of hospital and medical insurance programs for retired members of certain associations, organizations, boards, etc.

All payrolls of all departments, institutions, and agencies of the State government shall, prior to the issuance of vouchers in payment therefor, be submitted to the Director of the Budget, who shall check the same against the appropriations to such departments, institutions and agencies for such purposes, and if found to be within said appropriations, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the State Controller, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the Director of the Budget.

Required employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security for employees whose salaries are paid from general fund or highway fund revenues, or from department, office, institutional or agency receipts, or from non-State funds, shall be paid from the same source as the source of the employees' salaries. In those instances in which an employee's salary is paid in part from the general fund, or the highway fund, and in part from the department, office, institutional or agency receipts, or from non-State funds, the required salary-related contributions shall be paid from the general fund, or the highway fund, only to the extent of the proportionate part paid from the general fund, or highway fund, in support of the salary of such employee, and the remainder of the employer's contribution requirements shall be paid from the same source which supplies the remainder of such employee's salary. The requirements of this section as to the source of payment are also applicable to payments on behalf of the employee for hospital-medical insurance, longevity payments, salary increments, and legislative salary increases. The State Controller shall approve the method of payment by State departments, offices, institutions and agencies for employer salary-related requirements of this section, and determine the applicability of the section to an employer's salary-related contribution or payment in behalf of an employee.

Notwithstanding any other provisions of law relating to the salaries of officers and employees of departments, institutions, and agencies of State government, the Director of the Budget is authorized to provide a plan of flexible compensation to eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of G.S. 116-17.1 for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as

amended. This plan shall not include those benefits provided to employees and officers under Article 1A of Chapter 120 of the General Statutes and Articles 1, 3, 4, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the Director of the Budget may authorize State departments, institutions, and agencies to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. Should the Director of the Budget decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process."

Sec. 5. This act shall become effective January 1, 1991.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 2117

CHAPTER 1060

AN ACT TO PROVIDE THAT FOOD SOLD BY RELIGIOUS ORGANIZATIONS IS EXEMPT FROM TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(31a) Food sold by a church or religious organization not operated for profit when the proceeds of the sales are actually used for religious activities."

Sec. 2. This act shall become effective October 1, 1990, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 2128

CHAPTER 1061

AN ACT TO REQUIRE CONSENT OF THE COUNTY BOARDS OF COMMISSIONERS IN SEVERAL NAMED COUNTIES BEFORE LAND IN THOSE COUNTIES MAY BE CONDEMNED OR ACQUIRED BY A UNIT OF LOCAL GOVERNMENT OUTSIDE THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 283, Session Laws of 1981, as amended, is amended by adding immediately after the word "Person" the words, ", Anson, Bertie, Burke, Buncombe, Caldwell, Cleveland, Davidson, Davie, Forsyth, Martin, Montgomery, Rowan, Transylvania, Wilkes."

Sec. 2. Nothing herein shall restrict a municipality from owning or acquiring property within its corporate limits.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 2213

CHAPTER 1062

AN ACT TO INSTRUCT THE INFRASTRUCTURE STUDY COMMISSION TO STUDY FURTHER THE APPROPRIATE FINANCING OF LOCAL STORMWATER UTILITIES AND TO AUTHORIZE FUNDING OF DISPUTE RESOLUTION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-492 reads as rewritten:

"§ 160A-492. *Human relations, community action and manpower development programs.*

The governing body of any city, town, or county is hereby authorized to undertake, and to expend tax or nontax funds for, human relations, community action and manpower development programs. In undertaking and engaging in such programs, the governing body may enter into contracts with and accept loans and grants from the State or federal governments. The governing body may appoint such human relations, community action and manpower development committees or boards and citizens' committees, as it may deem necessary in carrying out such programs and activities, and may authorize the employment of personnel by such committees or boards, and may establish their duties, responsibilities, and powers. The cities and counties may jointly undertake any program or activity which they are authorized to undertake by this section. The expenses of undertaking and engaging in the human relations, community action and manpower development programs and activities authorized by this section are ~~declared to be~~ necessary expenses for which funds derived from taxation may be expended without the necessity of prior approval of the voters.

For the purposes of this section, a 'human relations program' ~~shall be defined as~~ is one devoted to (i) ~~to~~ the study of problems in the area of human relations, ~~or to~~ (ii) the promotion of equality of opportunity

for all citizens. ~~or to~~ (iii) the promotion of understanding, respect and goodwill among all citizens. ~~or to~~ (iv) the provision of channels of communication among the races. ~~or to~~ (v) dispute resolution. (vi) ~~encourage~~ encouraging the employment of qualified people without regard to race. ~~or to encourage~~ (vii) encouraging youth to become better trained and qualified for employment."

Sec. 2. The State Infrastructure and Local Government Financing Study Commission shall continue a review and analysis of local stormwater management and the concept of stormwater utilities, with particular emphasis on the requirements of the new Environmental Protection Agency regulations and ways to coordinate stormwater utilities within and between counties. The Commission shall report its findings and recommendations on these issues in a report to the General Assembly on or before January 15, 1991.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 2235

CHAPTER 1063

AN ACT TO PERMIT NASH COUNTY TO APPROPRIATE
ADDITIONAL FUNDS FOR INDUSTRIAL DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 368 of the 1957 Session Laws, as amended by Chapter 896 of the 1973 Session Laws, Chapter 125 of the 1979 Session Laws, Chapter 40 of the 1981 Session Laws, Chapter 339 of the 1983 Session Laws, and Chapter 499 of the 1987 Session Laws is further amended by deleting the phrase "one hundred fifty thousand dollars (\$150,000)" and substituting the phrase "two hundred thousand dollars (\$200,000)".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 2341

CHAPTER 1064

AN ACT TO SUPPORT PUBLIC HEALTH PROGRAMS AND
ACTIVITIES THROUGH AN ANNUAL FEE FOR FOOD AND
LODGING FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-248 reads as rewritten:
"§ 130A-248. Regulation of restaurants and hotels.

(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of restaurants, school cafeterias, summer camps, food or drink stands, sandwich manufacturing operations, mobile food units, pushcarts and other facilities where food or drink is prepared or served for pay. However, any facility where food or drink is prepared or served to the public, regardless of pay, shall be subject to the provisions of this Article if the facility holds an ABC permit, meets the definition of an establishment pursuant to G.S. 18B-1000(2), (4), (5), or (6) and does not meet the definition of a private club as provided in G.S. 130A-247(2).

(a1) For the protection of the public health, the Commission shall adopt rules governing the sanitation of hotels, motels, tourist homes, and other facilities where lodging is provided for pay.

(a2) For the protection of the public health, the Commission shall adopt rules governing the sanitation of private homes offering bed and breakfast accommodations to eight or less persons per night.

(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

- (1) Establishment of sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, and other areas and items;
- (2) The adequacy of:
 - a. Lighting, ventilation, and water supply;
 - b. Sewage collection, treatment, and disposal facilities; and
 - c. Lavatory facilities, food protection facilities, and waste disposal;
- (3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces;
- (3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;
- (4) The methods of food preparation, transportation, catering, storage, and serving;
- (5) The health of employees; and
- (6) Animal and vermin control.

The rules shall contain a system for grading facilities, such as Grade A, Grade B, and Grade C.

(b) No facility shall commence or continue operation that does not have a permit or transitional permit issued by the Department. The permit or transitional permit shall be issued to the owner or operator of the facility and shall not be transferable. A permit shall be issued only when the facility satisfies all of the requirements of the rules. The Commission shall adopt rules establishing the requirements that must be met before a transitional permit may be issued, and the period

for which a transitional permit may be issued. The Department may also impose conditions on the issuance of a permit or transitional permit in accordance with rules adopted by the Commission. A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the facility to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23.

(c) If ownership of a facility is transferred, the new owner or operator shall apply for a new permit. The new owner or operator may also apply for a transitional permit. A transitional permit may be issued upon the transfer of ownership of an establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health.

(d) The Department shall charge each facility subject to this section, except public school cafeterias, an annual fee of twenty-five dollars (\$25.00). The Department shall charge an additional twenty-five dollar (\$25.00) late payment fee to any facility that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend or revoke the permit of a facility that fails to pay the required fee within 60 days after billing by the Department. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be credited to the General Fund and may be used to support State and local public health programs and activities. The Department shall make an annual report to the Joint Legislative Commission on Governmental Operations and the Director of the Fiscal Research Division that shall include the fees collected and disbursed under this subsection and any other information requested by the General Assembly or the Commission."

Sec. 2. This act is effective upon ratification and shall expire on June 30, 1992.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 2349

CHAPTER 1065

AN ACT TO CREATE AN INTERAGENCY TASK FORCE TO REVIEW THE DESIRABILITY OF ESTABLISHING A STATEWIDE DEFENSIVE DRIVING-CITATION DISMISSAL PROGRAM.

Whereas, the practice of dismissing minor traffic citations upon completion of a "Defensive Driving Course" has been developed in at

least six prosecutorial districts, but is not available to most citizens of this State who are charged with minor traffic offenses; and

Whereas, the effects of such a program if implemented statewide are significant, and include the loss of substantial amounts of State and local government revenue; a potentially devastating morale problem among law enforcement officers whose charges are dismissed without review by prosecutors; unequal treatment of citizens of North Carolina charged with traffic offenses due to the lack of any statewide, uniform guidelines for determining curriculum, fees or eligibility; and

Whereas, the effects on vehicle insurance premiums and drivers license enforcement efforts, as well as other unintended effects of such a program need to be reviewed before it is established as an option to disposing of minor traffic charges in the courts; and

Whereas, the study of such a program can be accomplished without the appropriation of any additional funds by using the expertise of the agencies potentially affected by such a program; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. There is created the Interagency Defensive Driving-Citation Dismissal Task Force to be composed of representatives of the following agencies: the State Highway Patrol, the Department of Crime Control and Public Safety, the Department of Justice, the Conference of District Attorneys, the Division of Motor Vehicles, the Governor's Highway Safety Program, the Department of Insurance, the Administrative Office of the Courts, the Department of Community Colleges, and the Injury Control Section of the Department of Environment, Health, and Natural Resources. Any agency's expenses as a result of participation in the Task Force shall be paid from funds appropriated to the agency. The North Carolina Safety and Health Council shall be invited to attend and participate in meetings of the Task Force, but any expenses incurred by the Council are the Council's responsibility.

Sec. 2. The Task Force shall review the legality, desirability and feasibility of the establishment on a statewide basis of a Defensive Driving-Citation Dismissal Program, and report its findings to the General Assembly by March 1, 1991. If the Task Force determines that such a program is lawful, desirable, and feasible, the Task Force shall include in its report proposed legislation to implement the program. The legislation shall address the issue of whether the program should be implemented on a statewide or district-by-district basis, as well as the issue of a standard curriculum, fees, eligibility, record keeping and any other matter that it deems desirable. If the Task Force determines that such a program is not lawful, or is

undesirable or unfeasible, it shall report that finding, along with any recommended legislation needed to implement its recommendation to the General Assembly.

Sec. 3. Pending the completion of the Task Force's review, it is the intent of the General Assembly that no new program be established in any judicial district.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 1426

CHAPTER 1066

AN ACT TO MODIFY THE CURRENT OPERATIONS APPROPRIATIONS FOR NORTH CAROLINA FOR THE 1990-91 FISCAL YEAR AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE.

The General Assembly of North Carolina enacts:

Requested by: Senator Royall, Representative Diamont

-----INTRODUCTION

Section 1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

Requested by: Senator Royall, Representative Diamont

-----TITLE OF ACT

Sec. 2. This act shall be known as "The Current Operations Appropriations Act of 1990."

An outline of the provisions of the act follows this section. The outline shows the heading "-----CONTENTS/INDEX-----" and it lists by general category the descriptive captions for the various sections and groups of sections that make up the act.

-----CONTENTS/INDEX-----

(This outline is designed for reference only, and the outline and the corresponding entries throughout the act in no way limit, define, or prescribe the scope or application of the text of the act.)

-----INTRODUCTION 1

----TITLE OF ACT	1
PART I.----GENERAL FUND APPROPRIATIONS	6
----CURRENT OPERATIONS/STATE GOVERNMENT/STATE AID	6
PART II.----HIGHWAY FUND APPROPRIATIONS	11
----CURRENT OPERATIONS/HIGHWAY FUND	11
----CURRENT OPERATIONS/STATE AID	12
PART III.----BLOCK GRANT APPROPRIATIONS	12
----BLOCK GRANT PROVISIONS	12
PART IV.----GENERAL PROVISIONS	18
----NEGATIVE RESERVES/MANAGEMENT FLEXIBILITY ...	18
----BUDGET STABILIZATION RESERVE	21
----APPROPRIATION OF STATE TAX REVENUE TO LOCAL GOVERNMENTS	22
----REMOVE SUNSET ON REGULATION OF DENTAL ANESTHESIA	22
PART V.----DEPARTMENT OF ADMINISTRATION	22
----N.C. COALITION AGAINST DOMESTIC VIOLENCE FUNDS	22
----REDUCTION IN COUNCIL OF GOVERNMENTS FUNDS	23
----THE NORTH CAROLINA STATE INDIAN HOUSING AUTHORITY IS A HOUSING AUTHORITY GOVERNED BY CHAPTER 157 OF THE GENERAL STATUTES, AND IS NOT A STATE AGENCY	23
----LIMIT ON DOMESTIC VIOLENCE AND RAPE CRISIS PROGRAMS	24
----PARKING FEES/PARKING DECK CREDIT	24
PART VI.----DEPARTMENT OF CULTURAL RESOURCES ...	24
----PERMIT WASHINGTON COUNTY TO USE GRANT-IN- AID FUNDS FOR AN ADDITIONAL PURPOSE	24
----OLD FORT BRANCH MUSEUM FUNDS	24
----ELIMINATE THE MATCHING REQUIREMENT FOR FUNDS PREVIOUSLY APPROPRIATED FOR THE LATHAM HOUSE	24
PART VII.----GENERAL ASSEMBLY	25
----DEFER CONVENING OF GENERAL ASSEMBLY	25

-----ECONOMIC FUTURE COMMISSION	25
-----COMMISSION ON FUTURE STRATEGIES FOR NORTH CAROLINA	26
-----LEGISLATIVE MEMBERS' MILEAGE	28
PART VIII.-----OFFICE OF THE GOVERNOR	28
-----REDUCTION IN CONTINGENCY AND EMERGENCY FUND ALLOCATION	28
-----FUND COMMITMENT LIMITATIONS	28
PART IX.-----DEPARTMENT OF REVENUE	28
-----MAIL ORDER SALES TAX TO GENERAL FUND	29
-----SCHOOL CAPITAL FUNDING FROM NONRECURRING FUNDS	29
-----INVENTORY REIMBURSEMENT ADJUSTMENT	30
PART X.-----DEPARTMENT OF SECRETARY OF STATE	33
-----REPEAL OF STATEWIDE VOTER FILE	33
-----REDUCE INVENTORY OF SECRETARY OF STATE OF CERTAIN PUBLICATIONS	33
-----DELAY REQUIREMENT OF CORPORATE ANNUAL REPORT UNDER NEW BUSINESS CORPORATION ACT	33
PART XI.----- DEPARTMENT OF INSURANCE	33
-----RESCUE UNIT FUND CHANGES	34
PART XII.-----EMPLOYEE SALARIES AND BENEFITS	36
-----SALARY RELATED CONTRIBUTIONS/EMPLOYERS	36
-----PROVIDE RECIPROCITY OF CREDITABLE SERVICE TO DETERMINE ELIGIBILITY FOR BENEFITS AMONG THE LEGISLATIVE RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, AND THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM	37
-----STATE EMPLOYEES/SEVERANCE PAY CLARIFICATION	39
-----ACCELERATED PAY PLAN FOR LOWEST-PAID STATE EMPLOYEES	39
PART XIII.-----DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES	40
-----USE OF LAPSED SALARIES	40

-----BUXTON WOODS PURCHASE FUNDS	40
-----WASTE STREAM ANALYSIS	40
-----LIABILITY INSURANCE FOR HEALTH CARE EMPLOYEES	42
-----EPIDEMIOLOGY LINE ITEM TRANSFERS	43
-----STATEWIDE MEDICAL EXAMINER FUNDS	43
-----NON-MEDICAID REIMBURSEMENT	43
-----LUMBER RIVER PARK RANGER	44
-----UNION FIRE PLOW OPERATOR/COUNTY RANGERS	44
-----WILDLIFE COMMISSION FUNDS	44
-----WILDLIFE COMMITTEE EXPENSES	45
-----REDUCE INFANT MORTALITY	45
-----NURSE MIDWIVES FOR UNDERSERVED COUNTIES	45
-----OFFICE OF WASTE REDUCTION FUNDS	46
-----EHNH PERMITTING FUNDS	46
-----DEPARTMENTAL USE OF FEES	46
-----SICKLE CELL FUNDS/NOT SUBJECT TO BUDGET FLEXIBILITY	47
PART XIV.-----DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT	47
-----ECONOMIC DEVELOPMENT PUBLICATIONS	47
-----CELEBRATION FOUNDATION, INC.	48
-----NC MANUFACTURING DIRECTORY PROCEEDS	48
-----WORKER TRAINING TRUST FUND	48
-----RURAL ECONOMIC DEVELOPMENT CENTER	49
-----LIMIT FOR RURAL ECONOMIC DEVELOPMENT CENTER REDUCTIONS	50
PART XV.-----DEPARTMENT OF LABOR	50
-----NO BUDGET FLEXIBILITY/MIGRANT HOUSING INSPECTION PROGRAM	50
PART XVI.-----DEPARTMENT OF HUMAN RESOURCES	50
-----MEDICAID PROGRAM FUNDS/ADMINISTRATIVE ACTIVITIES	50
-----INFANT MORTALITY REDUCTION	51
-----WILLIE M. REPORTING CHANGE	51

-----EASTERN REGIONAL DETOXIFICATION FUNDS CHANGE	51
-----ADAP TRANSPORTATION REIMBURSEMENT	51
-----SPECIALIZED RESIDENTIAL CENTERS' BED CONVERSIONS	52
-----DAY CARE RATES	52
-----DHR PROGRAMS FUNDS	54
-----MEDICAID SERVICES COVERAGE CHANGE	54
-----COMMUNITY ACTION PROGRAM FUNDS	56
-----REVISED MEDICAID COVERAGE FOR PREGNANT WOMEN AND CHILDREN	57
-----CHRONICALLY MENTALLY ILL FUNDS	58
-----DHR PLANNING FUNDS	58
-----BUDGET REQUIRED TO INCLUDE STATE COST OF LOCAL PROGRAMS	58
-----USE OF STATE FUNDS AT MCLEOD PROGRAM	58
-----REST HOME AIDE TRAINING RULE SUSPENSION	58
-----DOMICILIARY RATE INCREASE	59
-----LIMITATIONS ON THE STATE ABORTION FUND	59
PART XVII.-----COLLEGES AND UNIVERSITIES	59
-----AID TO PRIVATE COLLEGES CLARIFICATION	59
-----UNC INSTITUTIONS' CENTENNIAL CELEBRATION FUNDS	60
-----UNC EMPLOYEES PAYROLL DEDUCTIONS FOR UNC CHARITIES AND ATHLETICS	61
-----PLAN FOR NURSE MIDWIFERY EDUCATION PROGRAMS	62
-----RURAL DEVELOPMENT PROGRAMS	62
-----HIGHER EDUCATION OPPORTUNITY STUDY	63
-----ECU MRI FUNDS	64
PART XVIII.-----COMMUNITY COLLEGES	64
-----RICHMOND COMMUNITY COLLEGE/CHILDBIRTH CLASSES	64
-----COMMUNITY COLLEGE TUITION INCREASE	65
-----"TECH PREP" IMPLEMENTATION	65
-----STATE BOARD OF COMMUNITY COLLEGES	

GUIDELINES	65
----COMMUNITY COLLEGE BOOKSTORE SALES	66
PART XIX.----PUBLIC SCHOOLS	66
----SMALL SCHOOL PROGRAM ALLOTMENTS	66
----LEAVE ACCUMULATION/PUBLIC SCHOOL EMPLOYEES	66
----PROSPECTIVE TEACHER SCHOLARSHIP LOAN PROGRAM/EXPANDED TO COVER ADDITIONAL CERTIFIED EMPLOYEES	70
----SCHOOL TRANSPORTATION BUDGET REDUCTION/ IMPLEMENTATION	71
----CAREER DEVELOPMENT PROGRAM TRANSITION	72
----BASIC EDUCATION FUNDS	73
----COMPLETION OF BASIC EDUCATION PROGRAM	74
----TEACHING FELLOWS FUND USES	76
----DPI GRANT FUNDS	76
----ELIMINATE EDUCATION REPORTS	77
----CHILD NUTRITION STAFF DEVELOPMENT	77
----UNIFORM EDUCATION REPORTING SYSTEM FUNDS ..	78
----LIMIT UNIFORM EDUCATION REPORTING SYSTEM FINES	78
----DIFFERENTIATED PAY FUNDS ALLOCATION	78
----STUDY OF NONCERTIFIED EMPLOYEES' SALARIES ...	80
----SAMPSON SCHOOL FUNDS/DEADLINE EXTENDED	80
----SCHOOL PSYCHOLOGIST SALARY RECLASSIFICATION	80
----NATIONAL CONFERENCE ON GOVERNORS' SCHOOLS	81
----NORTH CAROLINA GEOGRAPHIC ALLIANCE NETWORK FUNDS	81
----CLASS SIZE WAIVERS/TEACHER POSITIONS	81
----CITIES-IN-SCHOOLS CONTRACT AUTHORIZATION	81
----JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE	82
----PUBLIC SCHOOL TEACHERS/LIABILITY PROTECTION	83
PART XX.----DEPARTMENT OF CORRECTION	83
----LIMIT USE OF OPERATIONAL FUNDS	83
----RAISE PER DIEM REIMBURSEMENT	83

-----SOUTHERN APPALACHIA MAINSTREAM FUNDS	84
-----GATES COUNTY SCHOOL WASTEWATER TREATMENT	84
-----PRIVATE ALCOHOL AND DRUG ABUSE DETENTION CENTER	84
-----ROAD CREW PERFORMANCE AUDIT	84
PART XXI.-----JUDICIAL DEPARTMENT	84
-----RESERVE FOR RESENTENCING HEARINGS IN CAPITAL CASES	84
-----EXTEND CERTAIN SPECIAL SUPERIOR COURT JUDGE TERMS	85
-----INCREASED JUDICIAL DEPARTMENT OPERATING EXPENSE REQUIREMENTS	85
-----COMPREHENSIVE CHILD SUPPORT ENFORCEMENT STUDY	85
-----CREATE DURHAM COUNTY DEFENDER DISTRICT	86
-----RAPE VICTIM WITNESS COUNSELOR PROGRAM	87
PART XXII.-----DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY	87
-----CONTINUE SUMMIT HOUSE FUNDING	87
-----NO REORGANIZATION OF COMMUNITY PENALTIES PROGRAMS	87
-----ELIGIBILITY FOR VICTIMS COMPENSATION FUNDS ..	87
-----COMMUNITY PENALTIES PROGRAMS	88
-----HIGHWAY PATROL POSITIONS FILLED ONLY IN FISCAL YEAR IN WHICH THEY OCCUR	90
-----LAW ENFORCEMENT DRIVING TRACK FUNDS	90
PART XXIII.-----DEPARTMENT OF JUSTICE	90
-----STATE BUREAU OF INVESTIGATION SALARY ADJUSTMENT	90
-----MOBIL PLAN RESPONSE PROJECT	91
-----USE LAPSED SALARIES FOR SBI CONTRACTUAL POSITIONS	91
PART XXIV.-----DEPARTMENT OF TRANSPORTATION	91
-----FILL CERTAIN HIGHWAY FUND COMPUTER POSITIONS	91
-----MAINTENANCE OF STATE HIGHWAY BRIDGES	91

-----CASH FLOW HIGHWAY FUND APPROPRIATIONS	92
-----CASH FLOW HIGHWAY TRUST FUND APPROPRIATION	92
-----SPECIAL APPROPRIATIONS FOR HIGHWAYS REPEALED	92
-----CONFORM DOT MINORITY PARTICIPATION TO FEDERAL REGULATIONS	92
-----DRIVER TRAINING PROGRAM FUNDING FROM HIGHWAY FUND WITH REIMBURSEMENT TO HIGHWAY FUND FROM HIGHWAY TRUST FUND	93
-----LRC STUDY ON DRIVERS' EDUCATION	93
PART XXV.-----MISCELLANEOUS PROVISIONS	94
-----AUTISM SOCIETY FUNDS	94
-----EXECUTIVE BUDGET ACT APPLIES	94
-----COMMITTEE REPORT	94
-----MOST TEXT APPLIES ONLY TO 1990-91	94
-----1989-90 APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY	94
-----EFFECT OF HEADINGS	94
-----SEVERABILITY CLAUSE	94
-----EFFECTIVE DATE	95

PART I.-----GENERAL FUND APPROPRIATIONS

-----CURRENT OPERATIONS/STATE GOVERNMENT/STATE AID

Sec. 3. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated and appropriations from the General Fund of the State for aid to certain governmental and nongovernmental units are made for the fiscal year ending June 30, 1991, according to the schedule that follows. The amounts set out in the schedule are in addition to other appropriations from the General Fund for these purposes for the 1990-91 fiscal year. Amounts set out in brackets are reductions from General Fund appropriations for the 1990-91 fiscal year.

<u>Current Operations/State Government and State Aid</u>	<u>1990-91</u>
General Assembly	
01. Current Operations	\$ (652,119)
02. Reserve - Negative Appropriations	(333,847)
Judicial Department	
01. Current Operations	(5,409,241)
02. Reserve - Negative Appropriations	(3,272,798)
Department of the Governor	
01. Office of the Governor	
a. Current Operations	(147,761)
b. Reserve - Negative Appropriations	(76,621)
02. Office of State Budget and Management	
a. Current Operations	(111,904)
b. Reserve - Negative Appropriations	(54,729)
03. Special Appropriations - State Aid	(32,400)
Lieutenant Governor's Office	
01. Current Operations	(18,434)
02. Reserve - Negative Appropriations	(10,946)
Department of Secretary of State	
01. Current Operations	(113,771)
02. Reserve - Negative Appropriations	(60,202)
Department of State Auditor	
01. Current Operations	(243,544)
02. Reserve - Negative Appropriations	(125,877)
Department of State Treasurer	
01. Current Operations	(147,052)
02. Reserve - Negative Appropriations	(76,621)
Department of Public Education - Department	
01. Current Operations	466,097
02. Reserve - Negative Appropriations	(842,828)
Department of Public Education - Public School Fund	
01. Current Operations	(72,240,783)
02. Reserve - Negative Appropriations	(45,000,000)

Department of Justice	
01. Current Operations	(1,470,747)
02. Reserve - Negative Appropriations	(782,626)
Department of Administration	
01. Administration	
a. Current Operations	(1,128,057)
b. State Aid	(116,749)
c. Reserve - Negative Appropriations	(777,153)
02. State Controller	
a. Current Operations	(166,298)
b. Reserve - Negative Appropriations	(87,566)
Department of Agriculture	
01. Current Operations	(1,250,700)
02. State Aid	(8,250)
03. Reserve - Negative Appropriations	(640,330)
Department of Labor	
01. Current Operations	(260,005)
02. Reserve - Negative Appropriations	(131,350)
Department of Insurance	
01. Current Operations	(403,074)
02. Reserve - Negative Appropriations	(202,498)
Department of Environment, Health, and Natural Resources	
01. Current Operations	(1,943,767)
02. State Aid	1,380,523
03. Reserve - Negative Appropriations	(814,349)
Office of Administrative Hearings	
01. Current Operations	(62,288)
02. Reserve - Negative Appropriations	(32,837)
State Board of Elections	
01. Reserve - Negative Appropriations	(5,473)
Administrative Rules Review Commission	
01. Current Operations	(8,166)
02. Reserve - Negative Appropriations	(5,473)

Department of Human Resources

01. Alcoholic Rehabilitation Center - Black Mountain	(5,429)
02. Alcoholic Rehabilitation Center - Butner	(30,222)
03. Alcoholic Rehabilitation Center - Greenville	53,403
04. N.C. Special Care Center	(2,794,462)
05. Black Mountain Center	1,096,184
06. DHR - Administration and Support Program	
a. Current Operations	(822,619)
b. Reserve - Negative Appropriations	(17,163,035)
07. Division of Aging	-
08. Schools for the Deaf and Blind	(168,064)
09. Social Services	
a. Current Operations	11,676,021
b. State Aid	(1,200,000)
10. Social Services - State Aid to Non-State Agencies	100,000
11. Medical Assistance	
a. Current Operations	(5,634,070)
b. State Aid	750,000
12. Division of Services for the Blind	(130,975)
13. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	
a. Current Operations	490,250
b. State Aid	3,648,744
14. Dorothea Dix Hospital	(2,083,669)
15. Broughton Hospital	(1,618,647)
16. Cherry Hospital	(2,050,531)
17. John Umstead Hospital	(1,399,609)
18. Western Carolina Center	(204,615)
19. O'Berry Center	(1,175,094)
20. Murdoch Center	(593,484)
21. Caswell Center	(3,753,347)
22. Division of Facility Services	-
23. Division of Vocational Rehabilitation Services	(826,140)
24. Division of Youth Services	97,500
Total Department of Human Resources	(23,741,910)

Department of Correction	
01. Current Operations	8,497,697
02. State Aid	190,000
03. Reserve - Negative Appropriations	(6,392,354)
Department of Transportation	
01. State Aid Aeronautics	(195,497)
02. Aid to Railroads	(66,002)
Department of Economic and Community Development	
01. Economic and Community Development	
a. Current Operations	(486,174)
b. State Aid	(425,000)
c. Reserve - Negative Appropriations	(448,778)
02. Microelectronics Center	
a. State Aid	(1,671,000)
03. Biotechnology Center	
a. State Aid	(363,776)
b. Reserve - Negative Appropriations	(125,877)
Department of Revenue	
01. Current Operations	(1,703,372)
02. Reserve - Negative Appropriations	(864,719)
Department of Cultural Resources	
01. Current Operations	(664,882)
02. State Aid	(542,775)
03. Reserve - Negative Appropriations	(612,966)
Department of Crime Control and Public Safety	
01. Current Operations	(897,114)
02. State Aid	165,000
03. Reserve - Negative Appropriations	(448,778)
University of North Carolina - Board of Governors	
02. General Administration	(1,837,118)
03. University Operations -	
a. Current Operations Lump Sum	(150,000)
b. Reserve - Negative Appropriations	(16,911,281)

04. Related Educational Programs	
a. Current Operations	(149,248)
b. State Aid	(1,264,052)
c. Reserve - Negative Appropriations	
(01) Current Operations	(103,405)
(02) State Aid	(629,964)
05. University of North Carolina at Chapel Hill	
a. Academic Affairs	(4,191,631)
b. Division of Health Affairs	(2,630,850)
c. Area Health Education Centers	(776,126)
06. North Carolina State University at Raleigh	
a. Academic Affairs	(5,068,248)
b. Agricultural Research Service	(1,182,000)
c. Agricultural Extension Service	(922,966)
07. University of North Carolina at Greensboro	(1,807,442)
08. University of North Carolina at Charlotte	(1,846,863)
09. University of North Carolina at Asheville	(498,626)
10. University of North Carolina at Wilmington	(1,057,170)
11. East Carolina University	
a. Academic Affairs	(2,428,095)
b. Division of Health Affairs	(1,232,739)
12. North Carolina Agricultural and Technical State University	(1,147,342)
13. Western Carolina University	(1,137,402)
14. Appalachian State University	(1,724,988)
15. Pembroke State University	(476,647)
16. Winston-Salem State University	(492,863)
17. Elizabeth City State University	(435,513)
18. Fayetteville State University	(526,273)
19. North Carolina Central University	(894,904)
20. North Carolina School of the Arts	(248,353)

21. North Carolina Science and Math High School	
a. Current Operations	(230,356)
b. Reserve - Negative Appropriations	(109,458)
22. University of North Carolina Hospitals at Chapel Hill	
a. Current Operations	(1,159,170)
b. Reserve - Negative Appropriations	(585,601)
Total University of North Carolina	(53,856,694)

Department of Community Colleges - Department

01. Current Operations	(336,404)
02. Reserve - Negative Appropriations	(169,660)

Department of Community Colleges - Institutions

01. Current Operations	(2,571,794)
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Contingency and Emergency	(33,750)
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Reserve for Salary Adjustments	(11,273)
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Reserve - Accounting System	2,000,000
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Reserve for Salary Increases	(9,200,000)
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Debt Service	4,720,800
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GRAND TOTAL CURRENT OPERATIONS

/STATE GOVERNMENT AND STATE AID

/GENERAL FUND

\$ (227,679,666)

PART II.-----HIGHWAY FUND APPROPRIATIONS

-----CURRENT OPERATIONS/HIGHWAY FUND

Sec. 4. Appropriations from the Highway Fund of the State for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the fiscal year ending June 30, 1991, according to the schedule that follows. The amounts set out in the schedule are in addition to other appropriations from the Highway Fund for these purposes for the 1990-91 fiscal year. Amounts set out in brackets are reductions from Highway Fund appropriations for the 1990-91 fiscal year.

<u>Current Operations-Highway Fund</u>	<u>1990-91</u>
Department of Transportation	
01. Administration	\$ 2,775,000
02. Highways	
a. State Construction	
(01) Secondary Construction	(2,790,393)
(02) Special Appropriation for Highways	(65,257,535)
b. Ferry Operations	(373,298)
03. Division of Motor Vehicles	3,639,213
04. Primary Maintenance	10,131,378
Appropriations for Other State Agencies	
01. Crime Control and Public Safety	(3,167,748)
02. Department of Correction	2,883,856
03. State Treasurer	17,000,000
Reserve for Unforeseen Events	2,145,177
GRAND TOTAL CURRENT OPERATIONS-- HIGHWAY FUND	\$ (33,014,350)

-----CURRENT OPERATIONS/STATE AID

Sec. 5. Appropriations from the Highway Fund of the State to State departments, institutions, and agencies for aid to certain governmental and nongovernmental units are made for the fiscal year ending June 30, 1991, according to the schedule that follows. The amounts set out in the schedule are in addition to other appropriations from the Highway Fund for these purposes for the 1990-91 fiscal year. Amounts set out in brackets are reductions from Highway Fund appropriations for the 1990-91 fiscal year.

<u>Highway Fund</u>	<u>1990-91</u>
State Aid to Municipalities	\$ (2,790,393)
Grant to Keep North Carolina Beautiful, Inc.	25,000
GRAND TOTAL STATE AID-- HIGHWAY FUND	\$ (2,765,393)

PART III.-----BLOCK GRANT APPROPRIATIONS

Requested by: Senators Walker, Martin of Pitt, Representatives B. Ethridge, Redwine, Gardner

-----BLOCK GRANT PROVISIONS

Sec. 6. (a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 1991, according to the following schedule:

JOB TRAINING PARTNERSHIP ACT

01. Title II A funds to the 27 service delivery areas to train economically disadvantaged youth and adults	\$ 18,917,881
02. Education setaside to State education agencies for projects to serve eligible participants	1,940,295
03. Incentive grants and technical assistance funds to service delivery areas	1,455,222
04. Funds for training economically disadvantaged older workers	727,611
05. Funds to the Department of Economic and Community Development to administer and audit all activities related to the Job Training P'ship Act Programs	1,212,685
06. Title II B Summer Youth Employment and Training funds to service delivery areas for economically disadvantaged youth	9,695,044
07. Title III Dislocated workers funds to the Employment Security Commission	3,877,627
TOTAL JOB TRAINING PARTNERSHIP ACT	\$ 37,826,365

COMMUNITY SERVICES BLOCK GRANT

01. Community Action Agencies	\$ 7,899,715
02. Limited Purpose Agencies	438,873
03. Department of Human Resources to administer and monitor the activities of the Community Services Block Grant	438,873

TOTAL COMMUNITY SERVICES BLOCK GRANT \$ 8,777,461

COMMUNITY DEVELOPMENT BLOCK GRANT

01. State Administration	\$ 824,680
02. Urgent Needs/Contingency	1,770,466
03. Development Planning/Housing	1,770,466
04. Economic Development	7,081,864
05. Community Revitalization	24,786,524

TOTAL COMMUNITY DEVELOPMENT
BLOCK GRANT \$ 36,234,000

EDUCATION CONSOLIDATION AND IMPROVEMENT
BLOCK GRANT \$ 11,526,834

PREVENTIVE HEALTH BLOCK GRANT

01. Emergency Medical Services	\$ 455,087
02. Basic Public Health Services	879,362
03. Hypertension Programs	545,234
04. Health Education/Risk Reduction Programs and Health Promotion/Local Health Departments	936,118
05. Fluoridation of Water Supplies	146,079

06. Rape Prevention and Rape Crisis Programs	91,010
07. AIDS/HIV Education, Counseling, and Testing	294,374
08. TB Control Program	57,077
TOTAL PREVENTIVE HEALTH BLOCK GRANT	\$ 3,404,341

MATERNAL AND CHILD HEALTH SERVICES

01. Healthy Mother/Healthy Children Block Grants to Local Health Departments	\$ 11,718,781
02. High Risk Maternity Clinic Services, Perinatal Education, and Consultation to Local Health Departments and Other Health Care Providers	1,467,217
03. Services to Disabled Children	4,132,297
04. Sudden Infant Death Syndrome	32,633
05. Lead-Based Paint Poisoning	71,200
06. New Special Projects	1,249,653
07. Reimbursements for Local Health Departments for Contracted Nutritional Services	120,530
TOTAL MATERNAL AND CHILD HEALTH SERVICES	\$ 18,792,311

SOCIAL SERVICES BLOCK GRANT

01. County Departments of Social Services	\$ 43,304,967
02. Allocation for In-Home Services provided by County Departments of Social Services	1,200,000

03. Division of Mental Health, Developmental Disabilities, and Substance Abuse	5,881,994
04. Division of Services for the Blind	3,069,228
05. Division of Youth Services	1,051,428
06. Division of Facility Services	263,261
07. Division of Aging	333,706
08. Day Care Services	12,517,760
09. Volunteer Services	53,361
10. State Administration and State Level Contracts	3,401,714
11. Voluntary Sterilization funds	100,000
12. Transfer to Maternal and Child Health Block Grant	1,691,909
13. Adult Day Care Services	661,419
14. County Departments of Social Services for Child Abuse/Prevention and Permanency Planning	400,000
15. Allocation to Division of Health Services for Grants in Aid to Prevention Programs	445,000
16. Transfer to Preventive Health Block Grant for Emergency Medical Services and Basic Public Health Services	492,611
17. Allocation to Preventive Health Block Grant for AIDS Education	294,374
18. Allocation to Department of Administration for North Carolina Fund for Children	45,270
TOTAL SOCIAL SERVICES BLOCK GRANT	\$ 75,208,002

LOW INCOME ENERGY BLOCK GRANT

01. Energy Assistance Programs	\$ 18,196,292
02. Crisis Intervention	4,441,897
03. Administration	1,968,611
04. Weatherization Program	1,737,187
05. Indian Affairs	27,222
06. Transfer to Preventive Health Block Grant for Emergency Medical Services Program	209,116
07. Transfer to Social Services Block Grant for Adult Day Care Services	417,648
08. Transfer to Social Services Block Grant for State Administration & Contract Service	192,748
09. Transfer to Maternal and Child Health Grant for Maternal and Child Health Block Grant in the Division of Health Services for Healthy Mothers and Children	1,696,362
10. Transfer to SSBG for allocation to the Department of Administration for the North Carolina Fund for Children	45,270

TOTAL LOW INCOME ENERGY BLOCK GRANT \$ 28,932,353

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH
SERVICES BLOCK GRANT

01. Allocate funds to the four regional offices on a per capita basis for mental health services	\$ 1,866,556
02. Provide services for young chronically mentally ill adults. some of whom	

aged out of the Willie M. class prior to receiving appropriate services	200,000
03. Programs for the Chronically Mentally Ill	3,084,847
04. Continuation of child mental health nonresidential services in accordance with the Child Mental Health Plan	279,781
05. Continuation of child mental health residential services including group homes, specialized foster care, therapeutic homes, professional parenting programs, and respite care, with an emphasis on children under the age of 12	341,418
06. Continuation and expansion of community- based alcohol and drug services including prevention, early inter- vention, treatment, rehabilitation, nonhospital medical detoxification, and training	5,435,884
07. Continuation and expansion of services to female substance abusers, including specialized services at the ADATCS	2,448,946
08. Continuation and expansion of services to IV drug abusers, including increased capacity for drug screens and IV services at the ADATCS	3,477,240
09. Services to adolescents, including continuation and expansion of services in accordance with the Youth Substance Abuse Plan	3,140,864
10. Funding to support the provision of Treatment Alternatives to Street	

Crimes (TASC) programs for adults and four demonstration projects with local jails	462,104
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11. Continuing of funding for detoxification services in the Eastern Region	1,048,110
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12. Revolving loan pool for residential living for recovering substance abusers	100,000
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13. Administration	1,000,898
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**TOTAL ALCOHOL, DRUG ABUSE AND
MENTAL HEALTH SERVICES
BLOCK GRANT**

\$ 22,886,648

**MENTAL HEALTH SERVICES FOR THE HOMELESS
BLOCK GRANT**

01. Specialized Community Services for the Chronically Mentally Ill	\$ 275,000
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02. Community-based Services for Chronically Mentally Ill Youth	75,195
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**TOTAL MENTAL HEALTH SERVICES FOR THE
HOMELESS BLOCK GRANT**

\$ 350,195

COMMUNITY YOUTH ACTIVITY PROGRAM BLOCK GRANT

01. Development of Community-Based Substance Abuse Prevention Programs for Youth	\$ 83,623
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02. Evaluation	6,800
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**TOTAL COMMUNITY YOUTH ACTIVITY PROGRAM
BLOCK GRANT**

\$ 90,423

(b) Decreases in Federal Fund Availability

If federal funds are reduced below the amounts specified above after the effective date of this act, then every program, in each of the federal block grants listed above, shall be reduced by the same percentage as the reduction in federal funds. If federal funds are reduced in the Education Consolidation and Improvement Act Chapter

II Block Grant, then the State Board of Education shall determine how reductions are to be made among the various local agencies.

(c) Increases in Federal Fund Availability

Any block grant funds appropriated by the United States Congress in addition to the funds specified in this act shall be expended as follows:

- (1) For the Community Development Block Grant or for the Preventive Health Block Grant -- each program category under the Community Development Block Grant or the Preventive Health Block Grant, as applicable, shall be increased by the same percentage as the increase in federal funds.
- (2) For the Maternal and Child Health Services Block Grant -- these additional funds shall be allocated to local health departments to assist in the reduction of infant mortality.
- (3) For other block grants -- these additional funds may be budgeted by the appropriate department, with the approval of the Office of State Budget and Management, provided the resultant increases are in accordance with federal block grant requirements and are within the scope of the block grant plan approved by the General Assembly. All these budgeted increases shall be reported to the Joint Legislative Commission on Governmental Operations and to the Director of the Fiscal Research Division.

This subsection shall not apply to Job Training Partnership Act funds.

(d) Education Setaside of JTPA Funds

The Department of Economic and Community Development shall certify to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office when Job Training Partnership Act funds have been distributed to each agency, the total amount distributed to each agency, and the total amount of eight percent (8%) Education Setaside funds received.

PART IV.-----GENERAL PROVISIONS

Requested by: Senator Royall, Representative Diamont

-----NEGATIVE RESERVES/MANAGEMENT FLEXIBILITY

Sec. 7. (a)(1) To achieve the negative reserves set out in this act, each State department, institution, and agency and the public schools shall give highest priority to leaving positions vacant pursuant to subdivision (a)(2) of this subsection.

(2) The Office of State Budget and Management shall manage quarterly allotments so as to maximize savings from the General Fund

for fiscal year 1990-91 by not filling vacancies (i) in positions that have never been filled or (ii) caused by resignation or retirement, unless the Governor has determined that there is a critical need to fill the vacancies. These actions shall result in savings of at least \$40,000,000 from the General Fund for the 1990-91 fiscal year.

The Office of State Budget and Management shall make every effort to allocate the freeze equitably based on the vacant position report used by the Senate Appropriations Committee in selecting this reduction and, at the same time, protecting critical vacant positions needed in the State's institutions and prisons.

This subdivision applies to State government and to State-funded positions in the public school system, but it does not apply (i) to the employees of the Senate, the House of Representatives, or the Legislative Services Office, or (ii) to any teaching position with classroom responsibilities in the public school system, in The University of North Carolina system, in the Correctional System, or in the Department of Human Resources.

(b)(1) To the extent the Director of the Budget finds that actions taken pursuant to the subsection (a) of this section are not adequate to achieve the negative reserves set out in this act, the budget flexibility provisions set out in this subsection shall apply.

(2) G.S. 143-27 reads as rewritten:

" § 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.

All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs anticipated in the budget authorized by the General Assembly, of maintenance of such institutions, departments, and agencies; ~~Provided, however, that if the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget finds that the appropriations from that Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund. Notwithstanding the foregoing provisions of this section, receipts within The University of North Carolina realized in excess of budgeted levels shall be available,~~

~~up to a maximum of ten percent (10%) above budgeted levels, for each Budget Code, in addition to appropriations, to support the operations generating such receipts, as approved by the Director of the Budget.~~

~~The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on expenditures of receipts in excess of the amounts certified in General Fund Codes or Highway Fund Codes that did not result in a corresponding reduced allotment from appropriations from that Fund. agencies."~~

(3) G.S. 143-23(a1) reads as rewritten:

"(a1) No transfers may be made between line items in the budget of any department, institution, or other spending agency; however, with the approval of the Director of the Budget, a department, institution, or other spending agency may spend more than was appropriated for a line item if the overexpenditure is:

- (1) In a program for which funds were appropriated for that fiscal period and the total amount spent for the program is no more than was appropriated for the program for the fiscal period;
- (2) Required to continue a program because of unforeseen events, so long as the scope of the program is not increased;
- (3) Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;
- (4) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or
- (5) Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office the reason if the amount expended for a program is more than the amount appropriated for it from all sources.

~~Funds appropriated for salaries and wages may only be used for salaries and wages or for premium pay, overtime pay, longevity, unemployment compensation, workers' compensation, temporary wages, contracted personal services, moving expenses, payment of accumulated annual leave, certain awards to employees, tort claims, and employer's social security, retirement, and hospitalization payments; provided, however, funds appropriated for salaries and wages may also be used for purposes for which over expenditures are permitted by subdivisions (3), (4), and (5) of this subsection but the Director of the Budget shall include such use and the reason for it in~~

~~his quarterly report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office.~~ Lapsed salary funds that become available from vacant positions may not be used for new permanent employee positions or to raise the salary of existing employees.

As used in this subsection, 'program' means a group of expenditure and receipt line items for support of a specific budgeted activity outlined in the certified budget for each department, agency, or institution, as designated by the four-digit fund (purpose) number in the Budget Preparation System.

The requirements in this section that the Director of the Budget report to the Joint Legislative Commission on Governmental Operations shall not apply to expenditures of receipts by entities that are wholly receipt supported, except for entities supported by the Wildlife Resources Fund."

(c) The Office of State Budget and Management shall provide a quarterly report to each member of the General Assembly and to the Joint Legislative Commission on Governmental Operations and a monthly report to the Fiscal Research Division on budgetary actions taken pursuant to this section. The Office of State Budget and Management shall also report to the appropriations committees of the Senate and the House of Representatives prior to March 15, 1991, on budgetary actions taken through February 28, 1991, pursuant to this section and any other such actions anticipated during the 1990-91 fiscal year.

The March 15, 1991, report shall include vacant positions identified statewide that would result in \$40,000,000 of annualized savings should these positions be eliminated.

(d) All reductions achieved pursuant to the provisions of this section shall be temporary unless they are made permanent by the General Assembly.

(e) The Governor shall submit to the General Assembly with his proposed budget for the 1991-93 fiscal biennium a report of which items in the proposed budget are continuations of budget reductions achieved pursuant to the provisions of this section.

(f) This section shall not be construed to permit the creation of any new programs not authorized by the General Assembly or the elimination of any programs for which the appropriations committees of the Senate or the House of Representatives considered cuts that were not enacted for the 1990-91 fiscal year.

(g) This section shall become effective July 1, 1990, and shall expire June 30, 1991. Subdivisions (b)(2) and (b)(3) of this section shall become effective only to the extent the Director of the Budget

finds necessary to achieve the reductions set out as "Reserves - Negative Appropriations" in the appropriations for each department.

Sec. 8. Section 48 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 48. Sections 156 through 160 of Chapter 479 of the 1985 Session Laws, as amended, and G.S. 143-16.3, do not apply to the extent that the Director of the Budget finds that compliance is impossible and that deviation is necessary because of complications in the budget process that were not contemplated when the budget for the 1989-91 fiscal biennium was enacted.

The Director of the Budget shall report, on a monthly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on any deviations from Sections 156 through 160 of Chapter 479 of the 1985 Session Laws, as amended, and G.S. 143-16.3, and the reasons it was impossible to comply.

This section does not authorize deviations from Sections 156 through 160 of Chapter 479 of the 1985 Session Laws, as amended, and G.S. 143-16.3, to combine fund codes."

Sec. 9. (a) The Department of Environment, Health, and Natural Resources shall use funds available within its budget for the 1990-91 fiscal year for current operations to provide funds for programs according to the following schedule:

Program	Amount
1. Health Aid to Counties	\$289,407
2. Communicable Disease - Vaccines	109,232
3. Tuberculosis Control	200,689
4. Environmental Epidemiology	16,990
5. Vital Records	22,279
6. Environmental Health Aid to Counties	324,667
7. Mosquito Aid to Counties	100,000
8. Adult Health Care	274,814
9. Epilepsy Contracts	9,439
10. Adult Health Promotion	134,927
11. Hypertension Program	20,373
12. Arthritis Program	6,249
13. Genetic Screening Contracts	200,000
14. Adolescent Pregnancy Prevention Program	120,000

(b) The negative reserve for the Department of Environment, Health, and Natural Resources in Section 3 of this act has been reduced by the total amount of expenditures required by subsection (a) of this section. The expenditures required by subsection (a) of this

section are not subject to the budget flexibility authorized in Section 7 of this act.

Requested by: Senator Royall, Representative Diamont

-----BUDGET STABILIZATION RESERVE

Sec. 10. There is appropriated from the General Fund to the Office of State Budget and Management the sum of \$141,000,000 for the 1990-91 fiscal year for the initial establishment of a Budget Stabilization Reserve. The purpose of the Reserve is to provide a mechanism to stabilize the annual funding availability for carrying out State programs and providing financial assistance to local government units.

It is the intent of the General Assembly that the Economic Future Study Commission develop recommended rules governing the creation and maintenance of a permanent Reserve and that the 1991 General Assembly enact laws establishing the permanent Reserve.

It is also the intent of the General Assembly that the Reserve will be financed from General Fund revenues that would otherwise be expended and that the monies placed in the Reserve will be used to offset unanticipated reductions in funding availability resulting from changes in the economic outlook, federal tax changes, corporate financial actions, judicial decisions, federal spending mandates, and natural disasters.

The funds in the Reserve shall not be spent during the 1990-91 fiscal year without the prior approval of the General Assembly.

Requested by: Senator Royall, Representative Diamont

-----APPROPRIATION OF STATE TAX REVENUE TO LOCAL GOVERNMENTS

Sec. 11. In accordance with G.S. 105-113.82, 105-116, 105-120, and 105-213, as amended by Chapter 813 of the 1989 Session Laws, the following appropriations are made from the designated State tax revenue deposited in the General Fund to local governments for the 1990-91 fiscal year:

- | | |
|---|---------------|
| (1) Appropriation of franchise tax revenue,
pursuant to G.S. 105-116 and 105-120 | \$121,900,000 |
| (2) Appropriation of intangibles tax revenue,
pursuant to G.S. 105-213 | 99,700,000 |
| (3) Appropriation of beverage tax revenue,
pursuant to G.S. 105-113.82 | 21,100,000 |

The amounts appropriated shall be adjusted during the 1990-91 fiscal year based on the actual revenue collections received under the designated revenue sources. If an amount appropriated in subdivision (1), (2), or (3) of this section exceeds the adjusted amount based on

the designated revenue source, the excess reverts to the General Fund. If an amount appropriated in subdivision (1), (2), or (3) of this section is less than the adjusted amount based on the designated revenue source, the deficiency is appropriated from the designated revenue source to the local governments.

Requested by: Representative Jack Hunt

-----REMOVE SUNSET ON REGULATION OF DENTAL ANESTHESIA

Sec. 12. (a) Chapter 1073 of the 1987 Session Laws is reenacted, and Section 2 of that act reads as rewritten:

"Sec. 2. This act is effective upon ~~ratification, ratification, but shall expire June 30, 1990, and shall have no force and effect after that date.~~"

(b) This section shall become effective June 29, 1990.

PART V.-----DEPARTMENT OF ADMINISTRATION

Requested by: Senator Martin of Guilford, Representatives Easterling, Michaux

-----N.C. COALITION AGAINST DOMESTIC VIOLENCE FUNDS

Sec. 13. Section 15 of Chapter 752 of the 1989 Session Laws, reads as rewritten:

"Sec. 15. The funds appropriated to the Department of Administration, Council on the Status of Women, for fiscal years 1989-90 and 1990-91 for domestic violence centers, shall be allocated equally among all of the 61 domestic violence centers in operation on February 1, 1989, that offered services including a hotline, transportation services, community education programs, daytime services, and call forwarding during the night. For the 1989-90 fiscal year, each grant shall be \$15,000. For the 1990-91 fiscal year, each grant shall be \$17,500. The North Carolina Coalition Against Domestic Violence, Incorporated, is eligible for a grant of \$10,000 under this section."

Requested by: Senator Martin of Guilford, Representatives Easterling, Michaux

-----REDUCTION IN COUNCIL OF GOVERNMENTS FUNDS

Sec. 14. Section 42 of Chapter 500 of the 1989 Session Laws, reads as rewritten:

"Sec. 42. (a) Of the funds appropriated by Section 5 of this act to the Department of Administration, the sum of nine hundred ninety thousand dollars (\$990,000) for the 1989-90 fiscal year and nine hundred ~~ninety thousand~~ sixty thousand three hundred dollars

~~(\$990,000)~~ (\$960,300) for the 1990-91 fiscal year shall only be used as provided by this section. Each regional council of government or lead regional organization is allocated an amount up to fifty-five thousand dollars ~~(\$55,000) each fiscal year~~ in the 1989-90 fiscal year and fifty-three thousand three hundred fifty dollars ~~(\$53,350)~~ in the 1990-91 fiscal year, with the actual amount calculated as provided in subsection (b) of this section.

(b) The funds shall be allocated as follows: A share of the maximum ~~fifty-five thousand dollars (\$55,000)~~ each fiscal year shall be allocated to each county and smaller city based on the most recent annual estimate of the Office of State Budget and Management of the population of that county (less the population of any larger city within that county) or smaller city, divided by the sum of the total population of the region (less the population of larger cities within that region) and the total population of the region living in smaller cities. Those funds shall be paid to the regional council of governments for the region in which that city or county is located upon receipt by the Department of Administration of a resolution of the governing board of the county or city requesting release of the funds. If any city or county does not so request payment of funds by June 30 of a State fiscal year, that share of the allocation for that fiscal year shall revert to the General Fund.

(c) A council of governments may use funds appropriated by this section only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other activities as deemed appropriate by the member governments.

(d) Funds appropriated by this section may not be used for payment of dues or assessments by the member governments, and may not supplant funds appropriated by the member governments.

(e) As used in this section 'Larger City' means an incorporated city with a population of 50,000 or over. 'Smaller City' means any other incorporated city."

Requested by: Representative DeVane

-----THE NORTH CAROLINA STATE INDIAN HOUSING AUTHORITY IS A HOUSING AUTHORITY GOVERNED BY CHAPTER 157 OF THE GENERAL STATUTES, AND IS NOT A STATE AGENCY

Sec. 15. (a) The Director of the Office of Indian Housing has stated that if the North Carolina State Indian Housing Authority is a State agency, then it will be ineligible to receive more than \$1,000,000 per year in federal assistance. This section clarifies that the Authority is not a State agency.

(b) G.S. 157-66 reads as rewritten:

" § 157-66. *Authority created.*

There is hereby created and established a public body corporate and politic to be known as the North Carolina State Indian Housing Authority which shall be governed by the provisions of law controlling housing authorities as set out in this Chapter as well as other applicable provisions of the General Statutes. It is the intent of the General Assembly that the North Carolina State Indian Housing Authority not be treated as a State agency for any purpose, but rather that it be treated as a housing authority as set out above."

Requested by: Senator Martin of Guilford, Representatives Easterling, Michaux

-----LIMIT ON DOMESTIC VIOLENCE AND RAPE CRISIS PROGRAMS

Sec. 16. Notwithstanding the budget flexibility authorized in Section 7 of this act, no reductions for the 1990-91 fiscal year may be taken by the Department of Administration for the Domestic Violence and Rape Crisis Programs.

Requested by: Senator Martin of Guilford, Representatives Ramsey, Easterling

-----PARKING FEES/PARKING DECK CREDIT

Sec. 17. The Department of Administration shall make quarterly deposits to total \$1,908,300 of the parking fees collected in the 1990-91 fiscal year with the State Treasurer as a nontax revenue, to offset the General Fund appropriation for principal and interest on the parking deck authorized by Chapter 1048 of the 1987 Session Laws, Regular Session 1988.

PART VI.-----DEPARTMENT OF CULTURAL RESOURCES

Requested by: Senator Basnight, Representative Easterling

-----PERMIT WASHINGTON COUNTY TO USE GRANT-IN-AID FUNDS FOR AN ADDITIONAL PURPOSE

Sec. 18. Funds appropriated in Chapter 830 of the 1987 Session Laws for Washington County for a grant-in-aid to be used in preserving the history of the County by microfilming *The Roanoke Beacon*, the local newspaper, may be used by Washington County to pay a museum curator.

Requested by: Senator Swain, Representative R. Hunter

-----OLD FORT BRANCH MUSEUM FUNDS

Sec. 19. The unexpended balance of funds appropriated in the amount of \$50,000 to the Department of Cultural Resources in Section 4 of Chapter 1014 of the 1985 Session Laws, 1986 Regular Session, may be used for capital improvements for Old Fort Branch Museum (Mountain Gateway Museum).

Requested by: Senator Basnight, Representative James

-----ELIMINATE THE MATCHING REQUIREMENT FOR FUNDS PREVIOUSLY APPROPRIATED FOR THE LATHAM HOUSE

Sec. 20. Section 20 of Chapter 778 of the 1985 Session Laws reads as rewritten:

"Sec. 20. There is appropriated from the General Fund to the Department of Cultural Resources, Division of Archives and History, the sum of ten thousand dollars (\$10,000) for fiscal year 1985-86 to assist in the adaptive restoration of the Latham House. ~~House in Plymouth, provided a like amount of non-State funds is raised by the Latham Foundation to match this appropriation on a dollar-for-dollar basis.~~"

PART VII.-----GENERAL ASSEMBLY

Requested by: Senator Royall

-----DEFER CONVENING OF GENERAL ASSEMBLY

Sec. 21. G.S. 120-11.1 reads as rewritten:

" § 120-11.1. *Time of meeting.*

The regular session of the Senate and House of Representatives shall be held biennially beginning at 12:00 noon on the ~~first~~ third Wednesday after the second Monday in January next after their election."

Requested by: Senator Basnight, Representative Easterling

-----ECONOMIC FUTURE COMMISSION

Sec. 22. (a) The Economic Future Study Commission is created. The Commission shall:

- (1) Review the State's needs for changes in the revenue and budget structure to meet the needs of the State over the long term;
- (2) Make a comprehensive review of the State and local tax system, particularly in light of future economic trends that may affect revenues generated by existing taxes; and
- (3) Recommend proposals to enhance the State's revenue position, adapt the State tax structure to changes in the economy, avoid placing undue tax burdens on any segment

of the population, and preserve the positive impact of the tax structure on the economic future of the State.

(b) The Commission shall consist of 30 members to be appointed as follows:

- (1) Two members of the Senate appointed by the President Pro Tempore of the Senate.
- (2) Eight public members appointed by the President Pro Tempore of the Senate.
- (3) Two members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (4) Eight public members appointed by the Speaker of the House of Representatives.
- (5) Two members of the General Assembly appointed by the Governor.
- (6) Eight public members appointed by the Governor.

The President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Governor shall ensure that the members of the Commission are representative of all North Carolinians, including representatives of business and industry, professionals, educators, ethnic groups, environmental advocates, low-income citizens, and consumers. The three appointing officers shall jointly designate one member to serve as chair of the Commission.

(c) Members appointed to the Commission shall serve until the Commission makes its final report. Vacancies on the Commission shall be filled by the same appointing officer who made the original appointments.

(d) Upon request of the Commission or its staff, all State departments and agencies and all local government agencies shall furnish to the Commission or its staff any information in their possession or available to them. The Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4.

(e) The Commission shall submit a final report of its findings and recommendations to the 1991 General Assembly on or before February 1, 1991, by filing the report with the Speaker of the House of Representatives and President Pro Tempore of the Senate. The Commission shall terminate upon filing its final report.

(f) The Commission shall have its initial meeting on or before September 1, 1990. The Commission shall meet upon the call of the chair.

(g) The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer

shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of House and Senate supervisors of clerks. The expenses of employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. Commission members may travel to other states in order to examine other states' revenue and budget structures, upon the approval of the Legislative Services Commission.

(h) Members of the Commission shall receive per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also General Assembly members, at the rate established in G.S. 120-3.1;
- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6; and
- (3) All other Commission members, at the rate established in G.S. 138-5.

Requested by: Representatives Perdue, Easterling

-----COMMISSION ON FUTURE STRATEGIES FOR NORTH CAROLINA

Sec. 23. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 13B.

**"Joint Legislative Commission on Future Strategies
for North Carolina.**

" § 120-84.6. Purpose.

There is hereby established the Joint Legislative Commission on Future Strategies for North Carolina, hereinafter called the Commission, which shall review future trends and events to consider how they may affect North Carolina, and develop policy options for how State and local governments and the general public can be prepared to benefit from these future trends and events.

" § 120-84.7. Membership.

The Commission shall consist of six members of the House of Representatives appointed by the Speaker of the House of Representatives and six members of the Senate appointed by the President Pro Tempore of the Senate. Members shall serve for two-year terms beginning on the convening of the General Assembly in each odd-numbered year; provided, however, the terms of initial members shall begin on appointment and end on the day of the convening of the 1991 General Assembly. Members shall not be disqualified from completing a term of service on the Commission

because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission.

Vacancies created by resignation or otherwise shall be filled by the original appointing authority.

A House cochairman and a Senate cochairman shall be elected by the Commission from among its members.

" § 120-84.8. Powers and duties.

The Commission shall have the following powers and duties:

- (1) To review reports which propose future strategies, goals, or recommendations for North Carolina, and determine the status of the proposed strategies, goals, and recommendations.
- (2) To review governmental and nongovernmental research and studies relating to current and future trends and events, and to assess the impact of these future trends and events on future governmental policy.
- (3) To review current statutes related to comprehensive planning at all levels of government and propose changes considered most consistent with state-of-the-art comprehensive growth management and development policies.
- (4) To review the history and current status of intergovernmental relationships in North Carolina.
- (5) To conduct periodic surveys to assess citizen attitudes toward current trends and determine their impact on strategic policy options.
- (6) To undertake such additional studies, surveys, or evaluations as may, from time to time, be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Legislative Research Commission, or either house of the General Assembly.
- (7) To appoint advisory committees, which may include government officials and interested citizens, to examine specific issues as determined by the Commission. A Commission member shall be appointed chairman of such advisory committees.
- (8) To conduct studies of long range fiscal impact of proposals or policies under review by the Commission.
- (9) To develop rules regarding the selection, design, methodology, and execution of citizens attitude surveys, research and study topics for Commission approval and consideration.

- (10) To issue reports, forecasts, and recommendations to the General Assembly, from time to time, on matters relating to the powers and duties set out in this section.

" § 120-84.9. Reports to the General Assembly.

The reports shall contain findings, recommendations, and forecasts of potential future strategies and policy alternatives which may be beneficial to State and local governments and the general public of North Carolina.

" § 120-84.10. Additional powers.

The Commission shall have the following additional powers:

- (1) While in the discharge of official duties, to have access to any paper or document, and to compel the attendance of any State official or employee before the Commission or secure any evidence under the provisions of G.S. 120-19. In addition, the provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission as if it were a joint committee of the General Assembly.
- (2) To apply for and receive gifts and grants from private sources to assist the Commission in fulfilling its duties, subject to the approval of the Legislative Services Commission.

" § 120-84.11. Compensation and expenses of Commission members.

Members of the Commission shall serve without pay but shall receive per diem and subsistence in accordance with G.S. 138-5, 138-6, or 120-3.1, as appropriate. The facilities of the State Legislative Building and any other State office building used by the General Assembly, shall be available to the Commission for its use.

" § 120-84.12. Commission staffing.

(a) The Commission may use available clerical employees of the General Assembly, with the approval of the Legislative Services Commission.

(b) The Commission may, with the consent of the Legislative Services Commission, use employees of the Fiscal Research, Legislative Automated Systems, General Research, Legislative Drafting, and Public Information Divisions of the Legislative Services Commission."

Requested by: Representatives Beall, Michaux, Easterling

-----LEGISLATIVE MEMBERS' MILEAGE

Sec. 24. (a) G.S. 120-3.1(d) is repealed.

(b) This act shall become effective upon the convening of the 1991 Regular Session of the General Assembly.

PART VIII.-----OFFICE OF THE GOVERNOR

Requested by: Senator Martin of Guilford, Representatives Michaux, Easterling

-----REDUCTION IN CONTINGENCY AND EMERGENCY FUND ALLOCATION

Sec. 25. Section 50 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 50. Of the funds appropriated to the Contingency and Emergency Fund in Section 3 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, the sum of \$900,000 for the 1989-90 fiscal year and the sum of \$900,000 for the 1990-91 fiscal year shall be designated for emergency allocations, which are for the purposes outlined in G.S. 143-23(a1)(3), (4), and (5). The sum of \$225,000 for the 1989-90 fiscal year and the sum of ~~\$225,000~~ \$191,250 for the 1990-91 fiscal year shall be designated for other allocations from the Contingency and Emergency Fund."

Requested by: Representative Stam

-----FUND COMMITMENT LIMITATIONS

Sec. 26. G.S. 143-18 reads as rewritten:

"§ 143-18. *Unencumbered balances to revert to treasury: capital appropriations excepted.*

All unencumbered balances of maintenance appropriations shall revert to the State treasury to the credit of the general fund or special funds from which the appropriation and/or appropriations, were made and/or expended, at the end of each fiscal year; except that capital expenditures for the purchase of land, the erection of buildings, new construction or renovations in progress shall continue in force until the attainment of the object or the completion of the work for which the appropriations are made; except that maintenance appropriations to the General Assembly shall remain available until expended, unless otherwise provided by the Legislative Services Commission.

As used in this section, 'unencumbered' means not obligated in the form of purchase orders, contracts, renovations in progress or salary commitments. No purchase orders, contracts, renovations in progress, or salary commitments shall be entered into during a fiscal year unless sufficient funds are available within the purpose for which the funds were appropriated by the General Assembly or as authorized by the Director of the Budget as allowed by law."

PART IX.-----DEPARTMENT OF REVENUE

Requested by: Senator Royall, Representative Diamont

-----MAIL ORDER SALES TAX TO GENERAL FUND

Sec. 27. Effective June 30, 1990, Section 56 of Chapter 1086 of the 1987 Session Laws is repealed. All State sales and use tax proceeds in the State Special Revenue Fund created in Section 56 of Chapter 1086 of the 1987 Session Laws shall be credited to the General Fund. All local sales and use tax proceeds in the Local Special Revenue Fund created in Section 56 of Chapter 1086 of the 1987 Session Laws shall be distributed to local governments in accordance with Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and in accordance with Chapter 1096 of the 1967 Session Laws.

Requested by: Senator Royall

-----SCHOOL CAPITAL FUNDING FROM NONRECURRING FUNDS

Sec. 28. (a) It is the intent of the General Assembly that funding for the Public School Building Capital Fund and the Critical School Facility Needs Fund shall not be reduced but shall be appropriated for the 1990-91 fiscal year from nonrecurring revenue in the same manner as funding for other capital projects. The Public School Building Capital Fund and the Critical School Facility Needs Fund shall have first priority, ahead of all other capital projects, for nonrecurring revenue.

(b) G.S. 115C-546.1 reads as rewritten:

" § 115C-546.1. *Creation of Fund; administration.*

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs.

(b) ~~Beginning October 1, 1987, and each month thereafter through July 31, 1988, the Secretary of Revenue shall deposit with the State Treasurer in the Public School Building Capital Fund one-seventh (1/7) of the corporate income tax net collections received during the previous month by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes. Beginning July 1, 1988, the Secretary of Revenue shall, on a quarterly basis, deposit with the State Treasurer in the Public School Building Capital Fund an amount equal to two million five hundred thousand dollars (\$2,500,000) less than one-fourteenth (1/14) of the corporate income tax net collections received during the previous quarter by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes. All funds deposited in the Public School~~

Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(c) The Fund shall be administered by the Office of State Budget and Management."

(c) G.S. 115C-489.1(b) reads as rewritten:

"§ 115C-489.1. *Creation of fund; administration.*

(a) There is created the Critical School Facility Needs Fund.

(b) ~~On or before January 15, 1988, the Secretary of Revenue shall estimate the amount of additional tax revenue that will be collected during the twelve months ending June 30, 1988, as a result of Section 9 of the School Facilities Finance Act of 1987. The Secretary shall, prior to February 1, 1988, deposit with the State Treasurer in the Critical School Facility Needs Fund, an amount equal to that estimate. These funds shall be drawn from individual income tax net collections received by the Department of Revenue under Division II of Article 4 of Chapter 105 of the General Statutes.~~

~~The Secretary of Revenue shall, on or before February 1, 1988, deposit with the State Treasurer in the Critical School Facility Needs Fund the sum of forty million dollars (\$40,000,000). These funds shall be drawn from sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes.~~

~~Effective July 1, 1988, the Secretary of Revenue shall, on a quarterly basis, deposit with the State Treasurer in the Critical School Facility Needs Fund the sum of two million five hundred thousand dollars (\$2,500,000). These funds shall be drawn from the corporate income tax collections received by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes.~~

All funds deposited in the Critical School Facility Needs Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(c) The Fund shall be administered by the State Board of Education. Monies in the Fund shall be used only for the purposes specified in this Article."

(d) This section shall become effective July 1, 1990, and shall expire June 30, 1991.

Requested by: Representative Dickson

-----INVENTORY REIMBURSEMENT ADJUSTMENT

Sec. 29. (a) Notwithstanding the provisions of G.S. 105-275.1, the reimbursement to each city and county under G.S. 105-275.1, as amended by this section, for the 1990-91 fiscal year shall be reduced by nineteen one-hundredths of one percent (0.19%). The reimbursements under G.S. 105-275.1 for the 1991-92 fiscal year

shall be calculated as if the amount distributed for the 1990-91 fiscal year had not been reduced pursuant to this subsection.

(b) G.S. 105-275.1 reads as rewritten:

" § 105-275.1. *Reimbursement for exclusion of manufacturers' inventories and poultry and livestock.*

(a) Initial Distribution. -- On or before January 15, 1989, the governing body of each county and each city shall furnish to the Secretary a list of (i) all the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter; (ii) all livestock and poultry and feed used in the production of livestock and poultry that was required to be listed and assessed as of January 1, 1987, and was listed on or before September 1, 1987, in the county or city under this Subchapter; (iii) all the crops and other agricultural or horticultural products held for sale, whether in process or ready for sale, owned by taxpayers regularly engaged in the growth, breeding, raising, or other production of new products for sale, that were not included under subdivision (ii) above and that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter; ~~and~~ (iv) in the case of a city, all the inventories owned by manufacturers that were located as of January 1, 1987, in an area for which the city began annexation proceedings before September 1, 1987, and which became a part of the city after January 1, 1987, and before January 1, ~~1988~~, 1988; and (v) in the case of a city, all the inventories owned by manufacturers that were located as of January 1, 1987, in an area for which the city began annexation proceedings before September 1, 1987, and which became a part of the city after January 1, 1988, and before July 1, 1990. The list shall contain the value of the inventories and other items as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories owned by manufacturers and other items described in subdivisions (ii) and (iii) above that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in that district. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

On or before March 20, 1989, the Secretary shall pay to each county and city that submitted a list under this subsection an amount equal to the county or city average rate, as provided below, multiplied

by the value of the inventories described in subdivisions (i) and (iv) above contained in the list submitted by the city or county, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

On or before March 20, 1989, the Secretary shall also pay to each county and city that submitted a list under this subsection an amount equal to the average rate, as provided below, for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

The Secretary shall calculate an average rate for each county and city, and for each special district whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, or district for the eight years from 1980 through 1987. If a county, city, or district did not have tax rates in effect for the entire eight-year period, the average rate shall be the arithmetic mean of the property rates in effect for the years during the eight-year period that it did have rates in effect.

Of the funds received by each county and city pursuant to this subsection, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories in the district) shall be distributed among the districts in the county or city as soon as practicable after the city or county receives funds under this subsection. The county or city shall distribute to each special district in the county or city an amount equal to the average rate for the district multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been

compiled by the Bureau of Economic Analysis of the United States Department of Commerce. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this paragraph. The Local Government Commission shall report to the 1990 General Assembly any errors it discovers in the information furnished by local governments to the Secretary as required in this subsection.

(b) Subsequent Distributions. -- As soon as practicable after January 1, 1990, the Secretary shall pay to each county and city the amount it received under subsection (a) in 1989 plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1990, the Secretary shall also pay to each county and city an amount equal to the average rate for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1991, except as provided in subsection (f), the Secretary shall pay to each county and city the amount it received under this section the preceding year plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivision (v) of subsection (a) contained in the list submitted by the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. Thereafter, except as provided in subsection (f), as soon as practicable after January 1 of each year, the Secretary shall distribute to each county and city the amount it received under this section the preceding year.

Of the funds received by each county and city pursuant to this subsection in 1990, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories and other items in the district) shall be distributed among the districts in the county or city as soon as practicable after the city or county receives the funds. The county or city shall distribute to each special district in the county or city the amount it distributed to the district in 1989 plus an amount equal to the average rate for the district multiplied by the value of the items, other than inventory, described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Each year thereafter, as soon as practicable after receiving funds under this subsection, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to the amount it distributed among such districts the previous year. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this subsection. In addition, the Local Government Commission may adopt rules for the reallocation of funds when a special district is dissolved, merged, or consolidated, or when a special district ceases to levy tax, either temporarily or permanently.

(c) Use. -- Funds received by a county, city, or special district under this section may be used for any lawful purpose.

(d) 'City' Defined. -- As used in this section, the term 'city' has the same meaning as in G.S. 153A-1(1).

(e) Source of Funds. -- To pay for the distribution required by this section and the cost to the Department of Revenue of making the distribution, the Secretary of Revenue shall draw from the Local Government Tax Reimbursement Reserve an amount equal to the amount distributed and the cost of making the distribution.

(f) Correction of Errors. -- If the Secretary discovers that the amount or value of any inventories or other items listed by a county or city pursuant to subsection (a) of this section was overstated or understated, the Secretary shall adjust the amount to be distributed under subsection (b) as follows. For the distribution to be made in

the year following discovery of the overstatement or understatement, the Secretary shall distribute to the county or city the amount it would have received under subsection (b) in 1990 if it had not overstated or understated the amount or value of any inventories or other items, plus the total amount it failed to receive in 1989 and subsequent years due to understatement of the amount or value of the inventories or other items, or minus the total amount it received in 1989 and subsequent years due to overstatement of the amount or value of the inventories or other items. Thereafter, each year the Secretary shall distribute to the county or city the amount it would have received under subsection (b) in 1990 if it had not overstated or understated the amount or value of any inventories or other items."

(c) A city affected by the amendment to G.S. 105-275.1 provided in this section shall submit to the Secretary of Revenue a list of the manufacturers' inventories in the annexed area as soon as practicable.

(d) This section is effective upon ratification.

PART X.-----DEPARTMENT OF SECRETARY OF STATE

Requested by: Senator Martin of Guilford, Representative Easterling
-----REPEAL OF STATEWIDE VOTER FILE

Sec. 30. G.S. 163-66.1 is repealed.

Requested by: Senator Martin of Guilford, Representative Easterling
-----REDUCE INVENTORY OF SECRETARY OF STATE OF CERTAIN PUBLICATIONS

Sec. 31. Effective upon ratification of this act, the Publications Division of the Department of the Secretary of State may reduce inventories of the Journals of the North Carolina House of Representatives, the Journals of the State Senate, the Session Laws of North Carolina, and the North Carolina Manual as provided by this section. All such publications issued prior to 1987-88 may be made available at cost of postage only for a 60-day period commencing on the date of ratification of this act. After 60 days any such inventory exceeding 50 copies of each journal, 150 copies of each Session Laws, and 50 copies of each manual, shall be recycled or destroyed.

Requested by: Representatives Michaux, Easterling
-----DELAY REQUIREMENT OF CORPORATE ANNUAL REPORT UNDER NEW BUSINESS CORPORATION ACT

Sec. 32. (a) Section 3 of Chapter 265 of the 1989 Session Laws reads as rewritten:

"Sec. 3. This act shall become effective July 1, 1990, except that G.S. 55-16-22 shall become effective January 1, 1991."

(b) This section is effective June 30, 1990.

PART XI.----- DEPARTMENT OF INSURANCE

Requested by: Senator Plyler, Representative Tart

-----RESCUE UNIT FUND CHANGES

Sec. 33. (a) G.S. 58-87-5 reads as rewritten:
" § 58-87-5. *Volunteer Rescue/EMS Fund.*

(a) There is created in the Department of Insurance the Volunteer Rescue/EMS Fund to provide matching grants to volunteer rescue units providing rescue ~~only~~ or rescue and emergency medical services to purchase equipment and make capital improvements. An eligible rescue or rescue/EMS unit may apply to the Department of Insurance for a grant under this section. The application form and criteria for grants shall be established by the Department. The Office of Emergency Medical Services in the Department of Human Resources shall provide the Department with an advisory priority listing of EMS equipment eligible for funding. The State Treasurer shall invest the Fund's assets according to law, and the earnings shall remain in the Fund. Beginning December 15, 1989, and on each December 15 thereafter, the Department shall make grants to eligible rescue or rescue/EMS units subject to the following limitations:

- (1) The size of a grant may not exceed fifteen thousand dollars (\$15,000);
- (2) The applicant shall match the grant on a dollar-for-dollar basis with non-State funds;
- (3) The grant may be used only for equipment purchases or capital expenditures; and
- (4) An applicant may receive no more than one grant per fiscal year.

In awarding grants under this section, the Department shall to the extent possible select applicants from all parts of the State based upon need. Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year. In addition, notwithstanding G.S. 58-78-20, up to four percent (4%) of the Fund may be used for additional staff and resources for the North Carolina Fire and Rescue Commission.

(b) A rescue or rescue/EMS unit is eligible for a grant under this section if:

- ~~(1) It serves a response area of 10,000 or fewer residents or a response area that consists of an entire county;~~
- (2) It is all volunteer, except that the rescue or rescue/EMS unit may have paid members, not to exceed two positions, either full-time or part-time; and

(3) It has been recognized by the Department as an organization that provides rescue ~~only~~ or rescue and emergency medical services; and

(4) It satisfies the eligibility criteria established by the Department under subsection (a) of this section.

(c) For the purpose of this section and Article 88 of this Chapter, 'rescue' means the removal of individuals facing external, nonmedical, and nonpatient related peril to areas of relative safety. A 'rescue unit' or 'rescue squad' means a group of individuals who are not necessarily trained in emergency medical services, fire fighting, or law enforcement, but who expose themselves to an external, nonmedical, and nonpatient related peril to effect the removal of individuals facing the same type of peril to areas of relative safety. The unit or squad must comply with existing State statutes and with eligibility criteria established by the North Carolina Association of Rescue and Emergency Medical Services, Inc."

(b) G.S. 20-183.7(c) reads as rewritten:

"(c) Fees collected for inspection certificates shall be paid to the Division of Motor Vehicles in accordance with its regulations and shall be periodically transferred as follows: are payable to the Division of Motor Vehicles. The amount of each fee listed in the table below shall be credited to the Highway Fund, the Volunteer Rescue/EMS Fund established in G.S. 58-87-5, the Rescue Squad Workers' Relief Fund established in G.S. 58-88-5, and the Division of Environmental Management of the Department of Environment, Health, and Natural Resources:

(1) After making the transfer provided in subdivision (3) of this subsection, seventy-five cents (75¢) of the fee for the valid inspection certificate collected pursuant to subsection (a) shall be transferred to the Highway Fund, and the remaining moneys shall be transferred to the Department of Insurance for the Volunteer Rescue/EMS Fund created in G.S. 58-87-5,

(2) After making the transfer provided in subdivision (3) of this subsection, the fee collected pursuant to subsection (a1) shall be transferred as follows: the first thirty-five cents (35¢) to the Division of Environmental Management; the next twenty cents (20¢) to the Department of Insurance for the Volunteer Rescue/EMS Fund created in G.S. 58-87-5; and any excess up to one dollar and eighty-five cents (\$1.85) to the Highway Fund,

(3) Five cents (5¢) of the fee for the valid inspection certificate collected pursuant to subsections (a) and (a1) shall be transferred each quarter of the year to the North Carolina

~~Commissioner of Insurance, for the purpose of funding the Rescue Squad Workers' Relief Fund under Article 88 of General Statute Chapter 58.~~

<u>Fund or Agency</u>	<u>Fee Imposed Under (a)</u>	<u>Fee Imposed Under (a1)</u>
Highway Fund	.75	1.80
Volunteer Rescue/EMS Fund	.18	.18
Rescue Squad Workers' Relief Fund	.07	.07
Division of Environmental Management	.00	.35."

(c) G.S. 58-88-5 reads as rewritten:

"§ 58-88-5. *Rescue Squad Workers' Relief Fund; trustees; disbursement of funds.*

(a) ~~The money paid into the hands of the Commissioner of Insurance pursuant to G.S. 20-183.7(c)(3) shall be known and remain as the "Rescue Squad Workers' Relief Fund", and Fund" is created. It consists of the revenue credited to the Fund under G.S. 20-183.7(c) and shall be used for the purposes set forth in this Article.~~

(b) The Executive Committee of the Association shall be the Board of Trustees of the Fund. The Board shall consist of the Commander, Vice-Commander, Secretary-Treasurer, and two ~~immediate~~ past Commanders of the Association. The Commander shall be the Chairman of the Board. The Commander, Vice-Commander, and Secretary-Treasurer shall appoint the two past Commanders of the Association, who shall serve at the pleasure of the appointing officers.

(c) ~~The Commissioner of Insurance shall have~~ has exclusive control of the ~~funds realized under the provisions of this Article and G.S. 20-183.7(c).~~ Fund and shall disburse the funds revenue in the Fund to the Association only for the following purposes:

- (1) To safeguard any rescue or EMS worker in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of his or her duties as a rescue or EMS worker.
- (2) To provide a reasonable support for those persons actually dependent upon the services of any rescue or EMS worker who may lose his or her life in the service of his or her town, county, city, or the State, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.
- (3) To award scholarships to children of members, deceased members or retired members in good standing, for the purpose of attending a two year or four year college or

university, and for the purpose of attending a two year course of study at a community college or an accredited trade or technical school, any of which is located in the State of North Carolina. Continuation of the payment of educational benefits for children of active members shall be conditioned on the continuance of active membership in the rescue or EMS service by the parent or parents.

- (4) To pay death benefits to those persons who were actually dependent upon any member killed in the line of duty.
- (5) Notwithstanding any other provision of law, no expenditures shall be made pursuant to subdivisions (1), (2), (3), and (4) of this subsection unless the Board has certified that such expenditures will not render the Fund actuarially unsound for the purpose of providing the benefits set forth in subdivisions (1), (2), (3), and (4). If, for any reason, funds made available for subdivisions (1), (2), (3), and (4) are insufficient to pay in full any benefit, the benefits pursuant to subdivisions (1), (2), (3), and (4) shall be reduced pro rata for as long as the amount of insufficient funds exists. No claims shall accrue with respect to any amount by which a benefit under subdivisions (1), (2), (3), and (4) has been reduced."

(d) G.S. 58-88-30 reads as rewritten:

" § 58-88-30. *Administration costs.*

The Association shall withhold ~~three percent (3%)~~ eight percent (8%) from the money received pursuant to G.S. 20-183.7(c) for the administration of the Fund. The Commissioner of Insurance shall withhold two percent (2%) from the money received pursuant to G.S. 20-183.7(c) for the administration of the Fund."

(e) This act shall become effective July 15, 1990. Subsection (b) applies to fees collected on or after the effective date.

PART XII.-----EMPLOYEE SALARIES AND BENEFITS

Requested by: Representatives Colton, Easterling

-----SALARY RELATED CONTRIBUTIONS/EMPLOYERS

Sec. 34. Section 42(c) of Chapter 752 of the 1989 Session Laws reads as rewritten:

"(c) The State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 1990-91 fiscal year are (i) eleven and seventy-four hundredths percent (11.74%) - Teachers and State Employees; (ii) sixteen and seventy-four hundredths percent (16.74%) - State Law Enforcement Officers; (iii) ~~eight and twenty-seven hundredths percent (8.27%)~~

eight and thirty-seven hundredths percent (8.37%) - University Employees' Optional Retirement Program; (iv) thirty-one and thirty-six hundredths percent (31.36%) - Consolidated Judicial Retirement System; and (v) ~~thirty-eight and eighty-five hundredths percent (38.85%)~~ forty and twenty-five hundredths percent (40.25%) - Legislative Retirement System. Each of the foregoing contribution rates includes one and sixty-five hundredths percent (1.65%) for hospital and medical benefits. The rate for State Law Enforcement Officers includes five percent (5%) for the Supplemental Retirement Income Plan. The rates for Teachers and State Employees, State Law Enforcement Officers, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan."

Requested by: Representative Beard

-----PROVIDE RECIPROCITY OF CREDITABLE SERVICE TO DETERMINE ELIGIBILITY FOR BENEFITS AMONG THE LEGISLATIVE RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, AND THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM

Sec. 35. (a) Article 1A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-4.12A. Reciprocity of creditable service with other State-administered retirement systems.

(a) Only for the purpose of determining eligibility for benefits accruing under this Article, creditable service standing to the credit of a member of the Consolidated Judicial Retirement System, Teachers' and State Employees' Retirement System, or Local Governmental Employees' Retirement System shall be added to the creditable service standing to the credit of a member of this System; provided, that in the event a person is a retired member of any of the foregoing retirement systems, such creditable service standing to the credit of the retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems be added to the creditable service in this System for application of this System's benefit accrual rate in computing a service retirement benefit unless specifically authorized by this Article.

(b) A person who was a former member of this System and who has forfeited his creditable service in this System by receiving a return of contributions and who has creditable service in the Consolidated Judicial Retirement System, Teachers' and State Employees' Retirement System, or the Local Governmental Employees' Retirement System may count such creditable service for the purpose of restoring

the creditable service forfeited in this System under the terms and conditions as set forth in this Article and reestablish membership in this System.

(c) Creditable service under this section shall not be counted twice for the same period of time whether earned as a member, purchased, or granted as prior service credits."

(b) Article 3 of Chapter 128 of the General Statutes is amended by adding a new section to read:

"§ 128-26A. Reciprocity of creditable service with other State-administered retirement systems.

(a) Only for the purpose of determining eligibility for benefits accruing under this Article, creditable service standing to the credit of a member of the Legislative Retirement System, Consolidated Judicial Retirement System, or the Teachers' and State Employees' Retirement System shall be added to the creditable service standing to the credit of a member of this System; provided, that in the event a person is a retired member of any of the foregoing retirement systems, such creditable service standing to the credit of the retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems be added to the creditable service in this System for application of this System's benefit accrual rate in computing a service retirement benefit unless specifically authorized by this Article.

(b) A person who was a former member of this System and who has forfeited his creditable service in this System by receiving a return of contributions and who has creditable service in the Legislative Retirement System, Consolidated Judicial Retirement System, or the Teachers' and State Employees' Retirement System may count such creditable service for the purpose of restoring the creditable service forfeited in this System under the terms and conditions as set forth in this Article and reestablish membership in this System.

(c) Creditable service under this section shall not be counted twice for the same period of time whether earned as a member, purchased, or granted as prior service credits."

(c) Article 1 of Chapter 135 of the General Statutes is amended by adding a new section to read:

"§ 135-4A. Reciprocity of creditable service with other State-administered retirement systems.

(a) Only for the purpose of determining eligibility for benefits accruing under this Article, creditable service standing to the credit of a member of the Legislative Retirement System, Consolidated Judicial Retirement System, or the Local Governmental Employees' Retirement System shall be added to the creditable service standing to the credit of a member of this System; provided, that in the event a person is a

retired member of any of the foregoing retirement systems, such creditable service standing to the credit of the retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems be added to the creditable service in this System for application of this System's benefit accrual rate in computing a service retirement benefit unless specifically authorized by this Article.

(b) A person who was a former member of this System and who has forfeited his creditable service in this System by receiving a return of contributions and who has creditable service in the Legislative Retirement System, Consolidated Judicial Retirement System, or the Local Governmental Employees' Retirement System may count such creditable service for the purpose of restoring the creditable service forfeited in this System under the terms and conditions as set forth in this Article and reestablish membership in this System.

(c) Creditable service under this section shall not be counted twice for the same period of time whether earned as a member, purchased, or granted as prior service credits."

(d) Article 4 of Chapter 135 of the General Statutes is amended by adding a new section to read:

"§ 135-56A. Reciprocity of creditable service with other State-administered retirement systems.

(a) Only for the purpose of determining eligibility for benefits accruing under this Article, creditable service standing to the credit of a member of the Legislative Retirement System, Teachers' and State Employees' Retirement System, or the Local Governmental Employees' Retirement System shall be added to the creditable service standing to the credit of a member of this System; provided, that in the event a person is a retired member of any of the foregoing retirement systems, such creditable service standing to the credit of the retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems be added to the creditable service in this System for application of this System's benefit accrual rate in computing a service retirement benefit unless specifically authorized by this Article.

(b) A person who was a former member of this System and who has forfeited his creditable service in this System by receiving a return of contributions and who has creditable service in the Legislative Retirement System, Teachers' and State Employees' Retirement System, or the Local Government Employees' Retirement System may count such creditable service for the purpose of restoring the creditable service forfeited in this System under the terms and conditions as set forth in this Article and reestablish membership in this System.

(c) Creditable service under this section shall not be counted twice for the same period of time whether earned as a member, purchased, or granted as prior service credits."

(e) This section shall become effective October 1, 1990.

Requested by: Representative Barnes

-----STATE EMPLOYEES/SEVERANCE PAY CLARIFICATION

Sec. 36. (a) G.S. 143-27.2 reads as rewritten:

" § 143-27.2. Discontinued service retirement allowance and severance wages for certain State employees.

When the Director of the Budget determines that the closing of a State institution or a reduction in force will accomplish economies in the State Budget, he shall pay either a discontinued service retirement allowance or severance wages to any affected State employee, provided reemployment is not available. As used in this section, 'economies in the State Budget' means economies resulting from elimination of a job and its responsibilities or from a lack of funds to support the job. In determining whether to pay a discontinued service retirement allowance or severance wages, the Director of the Budget shall consider the recommendation of the department head involved and any recommendation of the State Personnel Director. Severance wages shall not be paid to an employee who chooses a discontinued service retirement. Severance wages shall not be subject to employer or employee retirement contributions. Severance wages shall be paid according to the policies adopted by the State Personnel Commission.

Notwithstanding any other provisions of the State's retirement laws, any employee of the State who is a member of the Teachers' and State Employees' Retirement System or the Law-Enforcement Officers' Retirement System and who has his job involuntarily terminated as a result of economies in the State Budget may be entitled to a discontinued service retirement allowance, subject to the approval of the employing agency and the availability of agency funds. An unreduced discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 55 years of age; or a discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 50 years of age, reduced by one-fourth of one percent (1/4 of 1%) for each month that retirement precedes his fifty-fifth birthday. In cases where a discontinued service retirement allowance is approved, the employing agency shall make a lump sum payment to the Administrator of the State Retirement Systems equal to the actuarial present value of the additional liabilities imposed upon the System, to be determined by the System's

consulting actuary, as a result of the discontinued service retirement, plus an administrative fee to be determined by the Administrator."

(b) This section shall not affect litigation pending as of the date of ratification of this act.

Requested by: Representative Barnes

-----ACCELERATED PAY PLAN FOR LOWEST-PAID STATE EMPLOYEES

Sec. 37. (a) The State Personnel Commission shall develop an accelerated pay plan for those State employees in the lowest pay grades. This accelerated pay plan shall be designed to take into consideration the labor market and economic indicators and to advance and retain a fully competent work force. In developing and implementing this pay plan, the State Personnel Commission shall:

- (1) Identify which pay grades are to be subject to this accelerated pay plan;
- (2) Adopt policies and rules to implement this plan;
- (3) Review the plan annually; and
- (4) Amend the plan as necessary, based on the labor market and economic indicators.

(b) Upward movement within the accelerated pay plan shall be based on the job performance of an employee meeting or exceeding performance requirements as determined by a specifically tailored performance appraisal system for employees within those pay grades subject to the accelerated pay plan.

(c) Employees who participate in the accelerated pay plan may not receive an additional performance increase pursuant to G.S. 126-7.

(d) To the extent that sufficient funds are available in the amount of up to \$750,000 in the 1990-91 Salary Increase Fund, the Director of the Budget shall transfer those funds to the Salary Adjustment Fund to be used for the Accelerated Pay Plan for Lowest-Paid State Employees.

PART XIII.-----DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----USE OF LAPSED SALARIES

Sec. 38. (a) The Office of State Budget may authorize the Department of Environment, Health, and Natural Resources to use the sum of \$110,615 in departmental lapsed salaries for the Air Quality

Section, Division of Environmental Management, to correct an error in the budgeting of federal receipts for fiscal year 1990-91.

(b) The Office of State Budget may authorize the Department of Environment, Health, and Natural Resources to use the sum of \$212,178 in departmental lapsed salaries for the Water Quality Section, Division of Environmental Management, to correct an error in the budgeting of federal receipts for fiscal year 1990-91.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----BUXTON WOODS PURCHASE FUNDS

Sec. 39. Funds deposited pursuant to G.S. 20-81.3(c) in the Recreation and Natural Heritage Trust Fund may be used during the 1990-91 fiscal year to match federal funds for the purchase of land at Buxton Woods.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----WASTE STREAM ANALYSIS

Sec. 40. Section 34 of Chapter 754 of the 1989 Session Laws, as rewritten by Section 28 of Chapter 799 of the 1989 Session Laws, reads as rewritten:

"Sec. 34. Of the funds allocated from the Special Reserve for Oil Overcharge Funds to the North Carolina Housing Trust Fund in Section 2 of Chapter 841 of the 1987 Session Laws, the sum of \$500,000 shall be reallocated to the Department of Commerce Economic and Community Development for the 1989-90 fiscal year to be used for a study including a waste stream analysis and the development of a State and local government recycling and waste management plan by the Department of Environment, Health, and Natural Resources. ~~These funds shall be used to conduct 'waste stream' research in North Carolina counties. This research study shall be contracted out by the Secretary of the Department of Environment, Health, and Natural Resources on a competitive bid basis to an organization or firm that responds successfully to a 'request for proposals' (RFP) issued at the direction and approval of the Secretary of the Department of Environment, Health, and Natural Resources. The RFP shall be issued by the Secretary and awarded no later than December 31, 1989, November 15, 1990. The RFP shall contain provisions for quarterly progress reports to be issued by the contractor to the Secretary, who shall also make provisions for distributing reports to private entities participating in the matching grants provision. Reports to the appropriate committees of the~~

~~General Assembly shall be determined by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.~~

~~These funds shall be matched on a one-to-one basis by private entities by April 30, 1990. The Secretary shall appoint a special advisory panel, composed of representatives from local units of government and organizations participating in the matching grants program, to comment on contractors' responses to the RFP. Panel members from local units of government shall be appointed so as to ensure that all regions of the State are equally represented. The Secretary, however, shall have final responsibility for awarding the contract.~~

~~At a minimum, the waste stream analysis research study shall include scientific and statistically significant sampling of solid waste material in each of North Carolina's 120 landfills; or, the study shall contain sufficient statistically reliable data to project, at an eighty percent (80%) confidence level, the content and volume of all existing North Carolina landfills or other properly permitted solid waste disposal facilities. Based on these specific findings, additional written outcomes of this waste stream analysis shall be the following:~~

- ~~(1) Recommended solid waste disposal policies, appropriate for regions or local units of government, that are considered practicable, as well as 'state-of-the-art'; that evaluate the financial impact and energy avoidance of recycling and alternative methods of solid waste disposal, including incineration and waste-to-energy options; that are consistent with contractor's findings; that contain specific procedures for monitoring market demand for recyclable goods; that identify potential domestic and foreign markets; that propose collection, storage, and transportation strategies, for regions, and for multi-county and single-county collection, recycling, treatment, and disposal; and that identify all relevant operating costs, capital costs, and revenues derived through the sale of recycled waste stream components and energy, related to their implementation;~~
- ~~(2) A recommended solid waste management plan, based upon the policies recommended in subdivision (1) of this section, for the State of North Carolina, or regions therein, including policies the State may consider to provide incentives for recycling facilities to locate in North Carolina; that suggest future strategies the State might consider to ensure that its investments produce measurable reductions in solid waste, offer economic alternatives to traditional landfills, and provide increased technical assistance to regions, counties, and cities;~~

- ~~(3) The plan, as recommended, shall contain a year-by-year determination of all relevant operating and capital costs, and propose recommended appropriations and/or financing mechanisms needed for the number of years required for its full implementation;~~
- ~~(4) Finally, the plan shall contain a specific evaluation component which shall describe criteria for measuring progress and results against the plan, and which shall be understood clearly by the general public.~~

The Secretary of the Department of Environment, Health, and Natural Resources shall solicit matching funds from non-State entities.

The waste stream analysis shall include a representative sample of waste disposal sites that considers such regional and county specific variables as topography, population, agriculture, industry, and economic base. The study shall be designed so that a statewide waste stream can be statistically defined. The analysis shall identify components and quantities of the materials in the State's waste stream and the recyclability of these components.

Based on the findings of the waste stream analysis, the study shall develop a State and local government recycling and waste management plan as set forth in G.S. 130A-309.07 and G.S. 130A-309.09. The plan shall also address the following:

- (1) Strategies for recycling or managing each of the waste streams identified;
- (2) Development of recycling plans, which may include the marketing of guaranteed waste streams, to meet the State's goal of recycling twenty-five percent (25%) of the State's waste stream by 1993; and
- (3) Development of county or regional waste stream profiles that shall be used for the development of model recycling plans for cities, towns, counties, and regions of the State.

The North Carolina Housing Finance Agency shall transfer the funds reallocated by this subsection to the Department of Economic and Community Development no later than September 1, 1989.

The Department of Commerce shall submit comprehensive annual reports to the General Assembly by May 5, 1990, and January 31, 1991, which detail the use of all funds received in the Stripper Well Litigation that were used or expended by State agencies. Any State department or agency that has received oil overcharge funds shall provide all information requested by the Department of Commerce for the purpose of preparing this report. The Department of Environment, Health, and Natural Resources shall provide all information requested by the Department of Economic and Community Development for the report the Department of Economic and Community Development is

required to make pursuant to Section 150(c) of Chapter 752 of the 1989 Session Laws. A final report of the waste stream analysis and the State and local government recycling and waste management plan shall be issued by the contractor to the Secretary of the Department of Environment, Health, and Natural Resources and the General Assembly at the convening of the Regular Session 1991, no later than May 1, 1991."

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----LIABILITY INSURANCE FOR HEALTH CARE EMPLOYEES

Sec. 41. Section 129 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 129. The Secretary of the Department of Human Resources and Resources, the Secretary of the Department of Environment, Health, and Natural Resources, and the Secretary of the Department of Correction may provide medical liability coverage not to exceed \$1,000,000 on behalf of employees of the Departments licensed to practice medicine or dentistry. This coverage may include commercial insurance or self-insurance and shall cover these employees for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment.

The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing contractual service to the Department of Human Resources Resources, the Department of Environment, Health, and Natural Resources, or the Department of Correction."

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----EPIDEMIOLOGY LINE ITEM TRANSFERS

Sec. 42. Of the funds appropriated to the Department of Environment, Health, and Natural Resources, Communicable Disease Control Section, amounts may be transferred from the Immunization Branch pharmaceutical line item for the 1990-91 fiscal year as follows: \$188,389 to the Immunization Branch salary and fringe benefits line item; \$37,100 to the Immunization Branch supplies and printing line item; and \$39,891 to the Immunization Branch travel line item.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----STATEWIDE MEDICAL EXAMINER FUNDS

Sec. 43. Section 138 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 138. The ~~State Health Director~~ Department of Environment, Health, and Natural Resources may budget for the ~~1989-90~~ 1990-91 fiscal year up to ~~\$450,000~~ \$250,000 of excess federal indirect cost receipts to ~~complete staff~~, complete and equip the Statewide Medical Examiner System."

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----NON-MEDICAID REIMBURSEMENT

Sec. 44. Section 105 of Chapter 500 of the 1989 Session Laws reads as rewritten:

"Sec. 105. Providers of medical services under the various State programs other than Medicaid offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program.

The Department of Human Resources may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Maximum net family annual income eligibility standards for services in these programs with the exception of Migrant Health, School Health, AIDS Drug Reimbursement Program, and Home Health shall be as follows:

Family Size	Kidney	Medical Eye Care Adults	Rehabilitation	All Other
1	\$6,400	\$4,860	\$ 8,364	\$4,200
2	8,000	5,940	10,944	5,300
3	9,600	6,204	13,500	6,400
4	11,000	7,284	16,092	7,500
5	12,000	7,824	18,648	7,900
6	12,800	8,220	21,228	8,300
7	13,600	8,772	21,708	8,800
8	14,400	9,312	22,220	9,300

The eligibility level each fiscal year for outpatient services for all clients and for inpatient services for children under the age of five in the Children's Special Health Services Program shall be one hundred percent (100%) of the federal poverty guidelines as revised annually by the United States Department of Health and Human Services, in effect on July 1, of each fiscal year. The eligibility level for children

in the Medical Eye Care Program in the Division of Services for the Blind shall be the same as that for children in the Children's Special Health Services Program."

Requested by: Senator Martin of Pitt, Representative DeVane

-----LUMBER RIVER PARK RANGER

Sec. 45. Section 155 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 155. From the funds appropriated ~~in Section 3 of this act to the Department of Natural Resources and Community Development, Environment, Health, and Natural Resources, Division of Parks and Recreation for the 1989-90 fiscal year and the 1990-91 fiscal year for State Park Staff, the Department shall establish and fund two one Park Ranger positions, position, including support and equipment costs, to be allocated to the Lumber River State Park.~~"

Requested by: Senator Plyler

-----UNION FIRE PLOW OPERATOR/COUNTY RANGERS

Sec. 46. (a) The Department of Environment, Health, and Natural Resources shall continue to station in Union County the fire plow that was purchased with Federal Emergency Management Administration (FEMA) funds. While stationed in Union County, this fire suppression unit shall serve the areas of the Mt. Holly District.

(b) The Department of Environment, Health, and Natural Resources shall use available funds, including lapsed salaries and other sources, not to exceed the sum of \$83,298 for the 1990-91 fiscal year for the following positions:

(1) The sum of \$41,649 for a County Ranger and Assistant Ranger for Union County, to be matched by the sum of \$27,766 in county funds; and

(2) The sum of \$41,649 for a County Ranger and Assistant Ranger for Mecklenburg County, to be matched by the sum of \$27,766 in county funds.

(c) The Department of Environment, Health, and Natural Resources shall use available funds, including lapsed salaries and other sources, not to exceed the sum of \$33,523 for the 1990-91 fiscal year for an operator and crew for the fire plow that is stationed in Union County pursuant to subsection (a) of this section.

(d) Subsection (c) of this section shall become effective October 1, 1990.

Requested by: Senators Martin of Pitt, Tally, Representative Beard

-----WILDLIFE COMMISSION FUNDS

Sec. 47. (a) The Wildlife Resources Commission may use up to \$235,000 in funds available to the Commission for the 1990-91 fiscal year for construction of a boating access area at Cedar Island in Carteret County.

(b) The Wildlife Resources Commission may use up to \$45,000 in funds available to the Commission for the 1990-91 fiscal year for construction of a boating access area at Ocracoke Island in Hyde County.

(c) Section 38 of Chapter 754 of the 1989 Session Laws reads as rewritten:

"Sec. 38. The Wildlife Resources Commission may use no more than ~~\$250,000~~ \$315,297 for the ~~1989-90~~ 1990-91 fiscal year to repair the dam at the Lake Rim Fish Hatchery in Cumberland County."

(d) Section 31 of Chapter 1100 of the 1987 Session Laws reads as rewritten:

"Sec. 31. The Wildlife Resources Commission may use funds available to it for the ~~1988-89~~ 1990-91 fiscal year for the construction of a ~~laboratory complex~~ visitor center at Pisgah Forest Fish Hatchery. The cost of the construction shall not exceed one hundred fifty-six thousand dollars (\$156,000). The Wildlife Resources Commission shall report to the Joint Legislative Commission on Governmental Operations on its plans before spending any funds on this project."

Requested by: Senator Barker, Representative Redwine

-----WILDLIFE COMMITTEE EXPENSES

Sec. 48. G.S. 113-335 reads as rewritten:

"§ 113-335. *North Carolina Nongame Wildlife Advisory Committee.*

The North Carolina Nongame Wildlife Advisory Committee is created subject to constitution, organization, and function as determined appropriate and advisable by resolution of the Wildlife Resources Commission. The Advisory Committee is to be comprised of knowledgeable and representative citizens of North Carolina whose responsibility shall be to advise the Commission on matters related to conservation of nongame wildlife including creation of protected animal lists and development of conservation programs for endangered, threatened, and special concern species.

Members of the Advisory Committee shall receive necessary travel and subsistence expenses while on official business of the Committee in accordance with G.S. 138-5 and G.S. 138-6, to be paid from the Nongame Account of the Wildlife Resources Fund."

Requested by: Senator Martin of Pitt, Representatives Redwine, B. Ethridge

-----REDUCE INFANT MORTALITY

Sec. 49. (a) Of the funds appropriated from the General Fund to the Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, the sum of \$300,000 for the 1990-91 fiscal year shall be used to expand the Rural Obstetrical Care Incentive Program established under Section 39.3 of Chapter 1100, 1987 Session Laws, Regular Session 1988. The Rural Obstetrical Care Incentive Program will be used to assist with the cost of malpractice insurance for family physicians, obstetricians, and certified nurse midwives who agree to provide prenatal and obstetrical services in medically underserved areas of the State. Physicians and certified nurse midwives covered under the Rural Obstetrical Care Incentive Program are required to participate in an obstetrical care coverage plan developed by their local health department or community, migrant, or rural health center, and must agree to provide services to pregnant women regardless of their ability to pay for the services.

(b) The Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, shall report to the Joint Legislative Commission on Governmental Operations in December 1990 about the feasibility of setting up a nurse midwifery education program in North Carolina.

(c) The Department of Environment, Health, and Natural Resources and the Department of Human Resources shall conduct a needs assessment in each county to determine the availability of prenatal care and necessary supportive services to pregnant women. The assessment shall include the availability of Women, Infants, and Children nutritional supplements, and maternity care coordination. The assessment shall also determine the extent to which the lack of such services impacts on low birthweight and infant mortality in the county. The Departments shall report their findings to the Joint Legislative Commission on Governmental Operations on March 15, 1991.

Requested by: Senator Martin of Pitt, Representatives Diamont, Redwine

-----NURSE MIDWIVES FOR UNDERSERVED COUNTIES

Sec. 50. Of the funds appropriated to the Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, the sum of \$400,000 for the 1990-91 fiscal year shall be used to fund four teams of certified nurse midwives in critically underserved counties throughout the State.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine, DeVane, Isenhower

-----OFFICE OF WASTE REDUCTION FUNDS

Sec. 51. The Department of Environment, Health, and Natural Resources may transfer up to \$165,000 of the funds appropriated for the 1990-91 fiscal year for research and education grants for the Pollution Prevention Pays Program to the Office of Waste Reduction to provide technical assistance to local governments and industries for waste reduction.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----EHNHR PERMITTING FUNDS

Sec. 52. The Department of Environment, Health, and Natural Resources may use the sum of \$447,240 in available funds, including lapsed salaries and other sources, for the 1990-91 fiscal year as follows:

- (1) The sum of \$54,730 for one position and support costs for hazardous waste management facility permitting by the Environmental Management Division;
- (2) The sum of \$50,796 for one position and support costs for hazardous waste facility assessment by the Environmental Management Division; and
- (3) The sum of \$341,714 for six positions and support costs for the permitting of low-level radioactive and hazardous waste facilities by the Division of Solid Waste Management.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----DEPARTMENTAL USE OF FEES

Sec. 53. (a) There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources for the 1990-91 fiscal year the sum of \$70,000 for permitting, education, and compliance activities, including establishing and supporting up to two positions in the Division of Coastal Management; provided, however, if the revenues raised from Chapter 987 of the 1989 Session Laws are less than \$70,000, then the appropriation is hereby reduced accordingly.

(b) There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources for the 1990-91 fiscal year the sum of \$80,000 for education, erosion control plan approval, and compliance activities in the Sedimentation Control Program, including establishing and supporting up to two positions in the Division of Land Resources; provided, however, if the revenues raised from Chapter 906 of the 1989 Session Laws are less than \$80,000, then the appropriation is hereby reduced accordingly.

(c) There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources for the 1990-91 fiscal year the sum of \$20,000 for permitting, education, and compliance activities in the Dam Safety Program, including establishing and supporting up to one half-time position in the Division of Land Resources; provided, however, if the revenues raised from Chapter 976 of the 1989 Session Laws are less than \$20,000, then the appropriation is hereby reduced accordingly.

(d) There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources for the 1990-91 fiscal year the sum of \$40,000 for permitting, education, and compliance activities in the Mining Program, including establishing and supporting up to one position and one half-time position in the Division of Land Resources; provided, however, if the revenues raised from Chapter 944 of the 1989 Session Laws are less than \$40,000, then the appropriation is hereby reduced accordingly.

(e) There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources for the 1990-91 fiscal year the sum of \$72,000 for support costs in the Nuclear Emergency Planning and Response Program in the Division of Radiation Protection; provided, however, if the revenues raised from Chapter 964 of the 1989 Session Laws are less than \$72,000, then the appropriation is hereby reduced accordingly.

(f) If either Senate Bill 1559, 1989 Regular Session, or House Bill 2341, 1989 Regular Session, is ratified, then there is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources, Division of Environmental Health, for the 1990-91 fiscal year the sum of \$488,400 to implement the restaurant and lodging fee collection program and to establish a computerized inventory of all restaurants and lodging facilities, including establishing and supporting up to four positions for the collection program, for the inventory program, or for both programs; and to increase Environmental Health Aid to Counties; provided, however, if the revenues raised from Senate Bill 1559, 1989 Regular Session, or House Bill 2341, 1989 Regular Session, as ratified, are less than \$488,400, then the appropriation is hereby reduced accordingly.

Requested by: Senator Hunt, Representative Michaux

-----SICKLE CELL FUNDS/NOT SUBJECT TO BUDGET FLEXIBILITY

Sec. 54. The budget flexibility authorized in Section 7 of this act does not apply to funds appropriated to the Department of Environment, Health, and Natural Resources, Division of Maternal

and Child Health, for the 1990-91 fiscal year for sickle cell center contracts.

PART XIV.-----DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----ECONOMIC DEVELOPMENT PUBLICATIONS

Sec. 55. G.S. 143B-435 reads as rewritten:

"§ 143B-435. *Publications.*

The Department of Economic and Community Development may also cause to be prepared for publication, from time to time, reports and statements, with illustrations, maps and other descriptions, which may adequately set forth the natural and material resources of the State and its industrial and commercial developments, with a view to furnishing information to educate the people with reference to the material advantages of the State, to encourage and foster existing industries, and to present inducements for investment in new enterprises. Such information shall be published and distributed as the Department of Economic and Community Development may ~~direct, at the expense of the State as other public documents.~~ direct. The costs of publishing and distributing such information shall be paid from:

- (1) State funds as other public documents; or
- (2) Private funds received:
 - a. As donations, or
 - b. From the sale of appropriate advertising in such published information."

Requested by: Senator Martin of Pitt, Representative DeVane

-----CELEBRATION FOUNDATION, INC.

Sec. 56. Section 30 of Chapter 799 of the 1989 Session Laws reads as rewritten:

"Sec. 30. The Department of ~~Commerce~~ Economic and Community Development may continue for the 1989-91 biennium the development and implementation of North Carolina Celebration '91 activities. ~~1991 Foundation, Inc. activities,~~ a series of activities and events which are scheduled to occur across the State in 1991 to ~~demonstrate local history and heritage.~~ heritage, promote travel to the State, and establish a permanent privately funded foundation for programs to address persistent issues in our State including adult illiteracy, infant mortality, environmental awareness, housing, and others."

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----NC MANUFACTURING DIRECTORY PROCEEDS

Sec. 57. (a) The Department of Economic and Community Development may expend for industrial promotional advertising any amount collected from the sales of the North Carolina Manufacturing Directory above the sum of \$155,000 already budgeted for the 1990-91 fiscal year.

(b) Beginning October 1, 1990, the Department shall submit quarterly reports to the Chairmen of the Senate and House Appropriations Committees and to the Director of the Fiscal Research Division. These reports shall include the amount of proceeds collected from the sales of the Directory and the amount spent on advertising pursuant to the provisions of this section.

Requested by: Senator Martin of Pitt, Representatives G. Wilson, Redwine, B. Ethridge

-----WORKER TRAINING TRUST FUND

Sec. 58. (a) Section 149 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 149. (a) There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of \$1,200,000 for the 1989-90 fiscal year ~~and the sum of \$1,200,000 for the 1990-91 fiscal year~~ for a Worker Readjustment Program to provide a statewide program of rapid response to plant closings. Funds appropriated by this section for the 1989-90 fiscal year but not spent or encumbered by June 30, 1990, shall be reallocated to the North Carolina Department of Economic and Community Development for the 1990-91 fiscal year for a State job training program to be administered through the Job Training Partnership Act system and aimed at the unemployed and the working poor.

(b) The Employment Security Commission shall report quarterly to the Joint Legislative Commission on Governmental Operations ~~by the first of each month prior to the expenditure of any funds appropriated by this section.~~ Operations. The report required by this subsection may be included in any other report that the Employment Security Commission is required to make to the Joint Legislative Commission on Governmental Operations.

(c) The Employment Security Commission shall use supplemental federal funds or other additional funds received by the Employment Security Commission for similar purposes before expending funds appropriated by this section."

(b) Section 111 of Chapter 500 of the 1989 Session Laws reads as rewritten:

"Sec. 111. (a) There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of four million five hundred thirty-seven thousand seven hundred eight dollars (\$4,537,708) for the 1989-90 fiscal year and the sum of ~~four million five hundred thirty-seven thousand seven hundred eight dollars (\$4,537,708)~~ five million dollars (\$5,000,000) for the 1990-91 fiscal year for the operation of local offices at the 1986-87 level of service.

(b) Notwithstanding G.S. 96-5(c), there is appropriated from the Special Employment Security Administration Fund to the Employment Security Commission of North Carolina, the sum of one million dollars (\$1,000,000) for the 1989-90 fiscal year and the sum of ~~one million dollars (\$1,000,000)~~ two million dollars (\$2,000,000) for the 1990-91 fiscal year for administration of the Veterans Employment Program, Employment Services Program, and Unemployment Insurance Program.

(c) Beginning October 1, 1989, the Employment Security Commission shall report to the Appropriations Committee on Natural and Economic Resources and the Joint Legislative Commission on Governmental Operations ~~by the first of each month, prior to the expenditure of any funds appropriated by this section, on a quarterly basis.~~ Supplemental federal funds or other additional funds received by the Employment Security Commission for similar purposes shall be expended prior to the expenditure of funds appropriated by this section."

(c) Notwithstanding the provisions of G.S. 96-5(f), there is appropriated from the Worker Training Trust Fund to the following agencies the following sums for the 1990-91 fiscal year for the following purposes:

- (1) The sum of \$2,000,000, less the sum reallocated in subsection (a) of this section, to the North Carolina Department of Economic and Community Development for a State job training program to be administered through the Job Training Partnership Act system aimed at the unemployed and the working poor.
- (2) The sum of \$250,000 to the North Carolina Department of Public Education for local implementation grants to establish five new Tech Prep programs in the public schools. These grants shall be provided to local school units that have a plan meeting the standards of the State Board of Education and the State Board of Community Colleges.

- (3) The sum of \$500,000 to the North Carolina Department of Labor for customized training of the unemployed and the working poor for specific jobs needed by employers through the Department's Pre-Apprenticeship Division.
- (4) The sum of \$2,000,000 to the North Carolina Department of Human Resources to assist welfare recipients in gaining employment through the federally funded Job Opportunities and Basic Skills program in such a way as to gain the maximum match of federal funds for the State dollars appropriated.
- (d) Beginning October 1, 1990, each of the departments receiving funds pursuant to subsection (c) of this section shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations on the use of these funds.
- (e) Notwithstanding the provisions of G.S. 96-5(f), there is appropriated from the Worker Training Trust Fund to the Employment Security Commission for the 1990-91 fiscal year the sum of \$1,459,673 for operation of local offices.
- (f) Subsection (e) of this section shall become effective October 1, 1990.

Requested by: Senators Martin of Pitt, Hunt, Representatives B. Ethridge, Redwine

-----RURAL ECONOMIC DEVELOPMENT CENTER

Sec. 59. Section 110 of Chapter 500 of the 1989 Session Laws, as amended by Section 64 of Chapter 770 of the 1989 Session Laws, reads as rewritten:

"Sec. 110. (a) Of the funds appropriated to the Department of ~~Commerce in Section 5 of this act,~~ Economic and Community Development, the sum of two million dollars (\$2,000,000) for fiscal year 1989-90 and the sum of ~~two million dollars (\$2,000,000)~~ one million seven hundred twenty-five thousand dollars (\$1,725,000) for fiscal year 1990-91 shall be used for a grant-in-aid to the Rural Economic Development Center, Inc., for the administrative costs of the Center and for its pilot projects and research. No more than five hundred thousand dollars (\$500,000) of the funds appropriated for each fiscal year may be used for the administrative costs of the Rural Economic Development Center, Inc.

(b) Beginning October 1, 1989, the Rural Economic Development Center, Inc., shall provide quarterly reports on the Center's pilot projects and research program to the Chairmen of the House Appropriations Committees on Natural and Economic Resources, the Chairman of the Senate Appropriations Committee on Natural and Economic Resources. The Joint Legislative Commission on

Governmental Operations, and the Fiscal Research Division not less than 48 hours prior to the beginning of the Commission's full meeting. These reports shall include information of the activities and accomplishments during the past fiscal year, itemized expenditures during the past fiscal year, sources of funding for the past and prospective fiscal years, and planned activities and planned expenditures for at least the next fiscal year.

(c) The Rural Economic Development Center, Inc., shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests."

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----LIMIT FOR RURAL ECONOMIC DEVELOPMENT CENTER REDUCTIONS

Sec. 60. Notwithstanding the budget flexibility authorized in Section 7 of this act, reductions in the Department of Economic and Community Development for the Rural Economic Development Center, Inc., for the 1990-91 fiscal year shall equal no more than one and one-half percent (1 1/2%) of the budget of the Rural Economic Development Center, Inc.

PART XV.-----DEPARTMENT OF LABOR

Requested by: Senator Martin of Pitt, Representatives Redwine, B. Ethridge

-----NO BUDGET FLEXIBILITY/MIGRANT HOUSING INSPECTION PROGRAM

Sec. 61. The budget flexibility authorized in Section 7 of this act does not apply to funds appropriated to the Department of Labor for the fiscal year 1990-91 for the Migrant Housing Inspection Program.

PART XVI.-----DEPARTMENT OF HUMAN RESOURCES

Requested by: Senator Walker, Representative Gardner

-----MEDICAID PROGRAM FUNDS/ADMINISTRATIVE ACTIVITIES

Sec. 62. The Department of Human Resources may use Medicaid funds budgeted from program services to support the cost of administrative activities to the extent that these administrative activities produce a net savings in services requirements. Administrative

initiatives funded by this section shall be first approved by the Office of State Budget and Management.

Requested by: Senator Walker, Representative Gardner

-----INFANT MORTALITY REDUCTION

Sec. 63. (a) The Division of Medical Assistance shall develop a statewide plan to inform Medicaid recipients about the availability of transportation, to determine the extent to which each local department of social services provides Medicaid transportation when requested, and to ensure that each local department provides Medicaid transportation. In gathering this information and designing the plan, the Division shall consult with other public and private agencies that work with Medicaid patients who need transportation services.

(b) The Department of Human Resources shall establish a Food Stamp Outreach Program. Under the Program, the Department shall inform public and private agencies, community groups, potentially-eligible persons, and the general public regarding the eligibility requirements of the Food Stamp Program. The Department shall develop a referral list of public and private agencies, community groups, and interested persons and organizations who serve low-income persons. The Department shall inform these agencies and persons regarding the Food Stamp Program and changes in the law that affect client eligibility or the extent of benefits. The Department shall develop and distribute informational materials, such as public service announcements, brochures, pamphlets, posters, and correspondence.

Requested by: Senator Walker, Representative Gardner

-----WILLIE M. REPORTING CHANGE

Sec. 64. Section 82(c) of Chapter 500 of the 1989 Session Laws reads as rewritten:

"(e) Reporting Requirements. The Department of Human Resources and the Department of Public Education shall submit, by May 1, ~~1990~~, 1991, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class. The report shall include the following unduplicated data for each county: (i) the number of children nominated for the Willie M. Class; (ii) the number of children actually identified as members of the Class in each county; (iii) the number of children served as members of the Class in each county; (iv) the number of children who remain unserved; (v) the types and locations of treatment and education services provided to Class members; (vi) the cost of services, by type, to members of the Class; (vii) information on the impact of treatment and education services on members of the Class."

Requested by: Senator Walker, Representative Gardner

-----EASTERN REGIONAL DETOXIFICATION FUNDS CHANGE

Sec. 65. Section 124 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 124. Funds appropriated to the Department of Human Resources, Division of Mental Health, ~~Mental Retardation, Developmental Disabilities,~~ and Substance Abuse Services, ~~for the 1989-90 fiscal year and~~ for the 1990-91 fiscal year for Eastern Regional Detoxification Services shall be allocated to the Division's Eastern Regional Office and distributed to area mental health, mental retardation, and substance abuse authorities ~~as determined by the regional management team.~~"

Requested by: Senator Walker, Representative Gardner

-----ADAP TRANSPORTATION REIMBURSEMENT

Sec. 66. Section 84 of Chapter 500 of the 1989 Session Laws reads as rewritten:

"Sec. 84. (a) Reimbursement of Adult Developmental Activity Programs for transportation of clients shall be based on a cost per client basis. ~~The minimum amount that a program may be reimbursed for transportation cost shall be eleven dollars (\$11.00) per client per month. The maximum amount that a program may be reimbursed for transportation cost shall be twenty-seven dollars (\$27.00) per client per month.~~ There shall be different levels of reimbursement based on documented cost levels.

(b) In reimbursing Adult Developmental Activity Programs, the Department shall base the reimbursement on the distribution by cost range developed by the Division of Mental Health, ~~Mental Retardation, Developmental Disabilities,~~ and Substance Abuse Services, in accordance with its most recently conducted survey cost study."

Requested by: Senator Walker, Representative Gardner

-----SPECIALIZED RESIDENTIAL CENTERS' BED CONVERSIONS

Sec. 67. Section 125 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 125. Funds made available as a result of the conversion of State supported beds in specialized residential centers to ICF/MR beds shall be used to increase the State subsidy provided to centers. Funds made available to centers by this section shall be used, as they become available, to increase the subsidy rate to sixty-five percent (65%) of the statewide ~~1988-89~~ average cost of providing this service based on the most recent Specialized Community Residential Cost Study.

Funds made available in addition to those needed to increase the subsidy rate shall be transferred to the Division of Medical Assistance to be used as State match for the converted ICF/MR beds."

Requested by: Senator Walker, Representative Gardner

-----DAY CARE RATES

Sec. 68. (a) Section 101 of Chapter 500 of the 1989 Session Laws reads as rewritten:

"Sec. 101. (a) Rules for the monthly schedule of payments for the purchase of day care services for low income children shall be established by the Social Services Commission pursuant to G.S. 143B-153(8)a., in accordance with the following requirements:

- (1) For ~~facilities~~ day care facilities, as defined in G.S. 110-86(3), in which fewer than fifty percent (50%) of the enrollees are subsidized by State or federal funds, the State shall continue to pay the same fee paid by private paying parents for a child in the same age group in the same facility.
 - (2) Facilities in which fifty percent (50%) or more of the enrollees are subsidized by State or federal funds may choose annually one of the following payment options:
 - a. The facility's payment rate for fiscal year 1985-86; or
 - b. The county market rate, as calculated annually by the Division of Facility Services' Child Day Care Section in the Department of Human Resources' Office of Child Day Care Services. Resources. A market rate shall be calculated for each county and for each age group of enrollees, and shall be the county average of all representative of fees charged to unsubsidized private paying parents for each age group of enrollees. Effective July 1, 1987, and thereafter, the enrollees within the county. The county market rates shall be calculated from facility fee schedules collected by the Office of Child Day Care Services' Section during its annual routine inspection visits.
 - (3) Child day care homes as defined in G.S. 110-86(4) and individual child care arrangements may be paid the county market rate for day care homes which shall be calculated at least biennially by the Child Day Care Section according to the method described in subsection (a)(2) of this section, using day care home fee schedules collected by the section during its routine inspection visits.
- (b) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes may participate in the program that provides for the

purchase of ~~slots~~ care in day care facilities, for minor children of needy families. No separate licensing requirements may be used to select facilities to participate.

Day care ~~plans~~ homes from which the State purchases day care services shall meet the standards established by the Child Day Care Commission pursuant to G.S. 110-101 and G.S. 110-105.1. Individual child care arrangements shall meet the requirements established by the Social Services Commission. ~~Until it can demonstrate that it meets the standards adopted by the Child Day Care Commission, a day care plan from which the State purchases day care services for minor children of needy families shall meet all certification standards adopted by the Department of Human Resources' Office of Child Day Care Services. The fee for the purchase of care from a day care plan is one hundred fifty dollars (\$150.00) per month. The fee for the purchase of care from individual Child Caring Providers is one hundred dollars (\$100.00) per month.~~

~~(c) Providers whose programs exceed licensing standards may modify their programs to standards consistent with licensing standards.~~

~~(d) Any savings that result by reason of this schedule shall be used by the Department to provide for payment of the costs of necessary day care for more minor children of needy families.~~

~~(e)~~ (c) County departments of social services shall continue to negotiate with day care providers for day care services below those rates prescribed by subsection (a) of this section. County departments are directed to purchase day care services so as to serve the greatest number of children possible with existing resources."

(b) Section 102 of Chapter 500 of the 1989 Session Laws reads as rewritten:

"Sec. 102. (a) To simplify current day care allocation methodology and more equitably distribute State day care funds, the Department of Human Resources shall apply the following allocation formula to all noncategorical federal and State day care funds used to pay the costs of necessary day care for minor children of needy families:

~~(1) Fifty percent (50%) of budgeted funds shall be distributed according to the county's population; and~~

~~(2) Fifty percent (50%) of budgeted funds shall be distributed based upon the county's poverty rate as a percentage of the sum total of all North Carolina's county poverty rates.~~

(1) One-third of budgeted funds shall be distributed according to the county's population in relation to the total population of the State;

(2) One-third of the budgeted funds shall be distributed according to the number of children under 6 years of age in

a county who are living in families whose income is below the State poverty level in relation to the total number of children under 6 in the State in families whose income is below the poverty level; and

- (3) One-third of budgeted funds shall be distributed according to the number of working mothers with children under 6 years of age in a county in relation to the total number of working mothers with children under 6 in the State.

(b) Counties whose allocation, if based on previously used formulas, exceeds the allocation produced by the formula prescribed by this section may not have their allocations reduced in either fiscal year 1989-90 or fiscal year 1990-91 to the level that results from application of the new formula. Counties whose allocation, if based on previously used formulas, is less than the allocation produced by the formula prescribed by this section shall continue to receive the proportional share of those funds that they received pursuant to appropriations for this purpose by the 1985 General Assembly. The formula prescribed by this section shall not be implemented unless additional State or federal funds are made available. The additional funds must be sufficient to apply the new formula without reducing any county's allocation below the previous year's initial allocation for child day care."

Requested by: Senator Walker, Representative Gardner

-----DHR PROGRAMS FUNDS

Sec. 69. (a) Notwithstanding the provisions of G.S. 143-23, the Secretary of the Department of Human Resources, with the approval of the Office of State Budget and Management, may use, to the extent possible, any funds appropriated or otherwise available to the Department in the 1990-91 fiscal year for the following needs, pursuant to the Governor's recommended changes to the 1990-91 State Budget:

- (1) Mental Health Accounting System;
- (2) Day Care Abuse/Neglect Investigators; and
- (3) Pioneer Funding Project.

(b) The Department of Human Resources shall choose the priority in which the items in subsection (a) of this section shall be funded.

Requested by: Senator Walker, Representative Gardner

-----MEDICAID SERVICES COVERAGE CHANGE

Sec. 70. (a) Section 70(a) of Chapter 500 of the 1989 Session Laws, as amended by Section 139(a) of Chapter 752 of the 1989 Session Laws, reads as rewritten:

"(a) Appropriations in Section 3 of this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy. Funds appropriated for these services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection.

Services and payment bases:

- (1) Hospital-Inpatient - Payment for hospital inpatient services will be based on a prospective rate reimbursement plan as established by the Department of Human Resources. Administrative days for any period of hospitalization shall be limited to a maximum of three days.
- (2) Hospital-Outpatient - Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Human Resources.
- (3) Mental Hospitals - Allowable costs or a prospective reimbursement if approved by the Director of the Budget.
- (4) Skilled Nursing Facilities and Intermediate Care Facilities - As Prior to October 1, 1990, as prescribed under the State Plan for reimbursing Long-Term Care Facilities. Skilled nursing facility participation in the Medicare program is a condition of participation in the North Carolina Medicaid skilled nursing facility program. Effective October 1, 1990, skilled nursing facilities and intermediate care facilities, except those intermediate care facilities for the mentally retarded, will be designated for Medicaid purposes as nursing facilities. Nursing facilities will be reimbursed as prescribed under the State Plan for reimbursing Long-Term Care Facilities. Nursing facilities providing services to Medicaid recipients who also qualify for Medicare, must be enrolled in the Medicare program as a condition of participation in the Medicaid program, subject to phase-in certification for those nursing facilities not already enrolled in Medicare.
- (5) Intermediate Care Facilities for the Mentally Retarded - As prescribed under the State Plan for reimbursing intermediate care facilities for the mentally retarded.
- (6) Drugs - Drug costs as allowed by federal regulations plus four dollars twenty-four cents (\$4.24) professional services fee per month excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be available for up to six prescriptions per recipient, per month, including refills. Payments for drugs are

subject to the provisions of subsection (g) of this section and to the provisions at the end of subsection (a) of this section, or in accordance with a plan adopted by the Department of Human Resources consistent with federal reimbursement regulations.

- (7) Physicians, Chiropractors, Podiatrists, Optometrists, Dentists, Certified Nurse Midwife Services - Fee schedules as developed by the Department of Human Resources. Payments for dental services are subject to the provisions of subsection (f) of this section.
- (8) Community Alternative Program, EPSDT Screens - Payment to be made in accordance with a rate schedule developed by the Department of Human Resources.
- (9) Home Health, Private Duty Nursing, Clinic Services, ~~Mental Health Clinics~~, Prepaid Health Plans - Payment to be made according to reimbursement plans developed by the Department of Human Resources.
- (10) Medicare Buy-In - Social Security Administration premium.
- (11) Ambulance Services - Uniform fee schedules as developed by the Department of Human Resources.
- (12) Hearing Aids - Actual cost plus a dispensing fee.
- (13) Rural Health Clinic Services - Provider based - reasonable cost; nonprovider based - single cost reimbursement rate per clinic visit.
- (14) Family Planning - Negotiated rate for local health departments. For other providers - see specific services, for instance, hospitals, physicians.
- (15) Independent Laboratory and X-Ray Services - Uniform fee schedules as developed by the Department of Human Resources.
- (16) Optical Supplies - One hundred percent (100%) of reasonable wholesale cost of materials.
- (17) Ambulatory Surgical Centers - Negotiated rates, established by the Department of Human Resources.
- (18) Medicare Crossover Claims - Actual coinsurance or deductible or both.
- (19) Physical Therapy and Speech Therapy - Services limited to EPSDT eligible children. Payments are to be made only to the Children's Special Health Services program at rates negotiated by the Department of Human Resources.
- (20) Personal Care Services - Payment in accordance with plan approved by the Department of Human Resources.

- (21) Case Management Services - Reimbursement in accordance with the availability of funds to be transferred within the Department of Human Resources.
- (22) Hospice - Services may be provided in accordance with plan developed by the Department of Human Resources.
- (23) Other Mental Health Services - Unless otherwise covered by this section, coverage is limited to agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made according with a plan developed by the Department of Human Resources not to exceed the upper limits established in federal regulations.
- (24) Medically Necessary Prosthetics/Orthotics for EPSDT Eligible Children - Reimbursement in accordance with plan approved by the Department of Human Resources.

Reimbursement is available for up to 24 visits per recipient per year to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, ~~EPSDT screens,~~ all EPSDT eligible children, and emergency rooms are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Human Resources where the life of the patient would be threatened without such additional care. Any person who is determined by the Department to be exempt from the 24-visit limitation may also be exempt from the six-prescription limitation."

(b) This section does not repeal Section 139(b) of Chapter 752, Session Laws of 1989, which may become effective as provided therein.

Requested by: Senator Walker, Representative Gardner
-----COMMUNITY ACTION PROGRAM FUNDS

Sec. 71. Section 119 of Chapter 500 of the 1989 Session Laws reads as rewritten:

"Sec. 119. For the 1989-90 fiscal year and the 1990-91 fiscal year, all agencies designated as eligible agencies pursuant to G.S. 113-28.24 that receive Community Service Block Grant funds may use those funds for the administration of agency programs. The amount of those funds used for administration of agency programs shall be limited to ten percent (10%) of the total annual budget of the agency as certified in the prior year's audit of the agency. The Department of ~~Natural Resources and Community Development~~ Human Resources shall report ~~quarterly~~ annually to the Joint Legislative Commission on Governmental Operations and the Appropriations Committee on

~~Natural and Economic Resources~~ Human Resources beginning October 1, 1989, 1990, on the use of Community Service Block Grant Funds for administration of agency programs. The report shall show:

- (1) The total budget for each community action agency or limited purpose agency by program-funding source;
- (2) The amount of funds for administration provided by each program;
- (3) The criteria for determining the amount of funds used for administrative expenses; and
- (4) The number of persons served by each program."

Requested by: Representative Gardner

-----REVISED MEDICAID COVERAGE FOR PREGNANT WOMEN AND CHILDREN

Sec. 72. Section 70(m) of Chapter 500 of the 1989 Session Laws, as rewritten by Section 133 of Chapter 752 of the 1989 Session laws, reads as rewritten:

"(m) The Department of Human Resources shall provide Medicaid coverage to pregnant women, to infants, and to children according to the following schedule:

- ~~(1) Effective July 1, 1989, through December 31, 1989, pregnant women with family incomes equal to or less than the federal poverty guidelines as revised annually shall be covered for Medicaid benefits;~~
- ~~(21) Effective January 1, 1990, to September 30, 1990, pregnant women with incomes equal to or less than one hundred fifty percent (150%) of the federal poverty guidelines as revised annually each July 1 shall be covered for Medicaid benefits;~~
- (2) Effective October 1, 1990, pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each July 1 shall be covered for Medicaid benefits.
- ~~(3) Effective July 1, 1989, through December 31, 1989, infants under the age of one with family incomes equal to or less than the federal poverty guidelines as revised annually shall be covered for Medicaid benefits;~~
- (43) Effective January 1, 1990, to September 30, 1990, infants under the age of one with family incomes equal to or less than one hundred fifty percent (150%) of the federal poverty guidelines as revised annually each July 1 shall be covered for Medicaid benefits;

- (4) Effective October 1, 1990, infants under the age of 1 with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each July 1, shall be covered for Medicaid benefits.
- (5) Effective October 1, 1989, through September 30, 1990, children aged 1 through 5 with family incomes equal to or less than the federal poverty guidelines as revised each July 1 shall be covered for Medicaid benefits;
- (6) Effective October 1, 1990, children aged 1 through 5 with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guidelines as revised each July 1 shall be covered for Medicaid benefits;
and
- ~~(5) Effective July 1, 1989, through September 30, 1989, children under the age of three with family incomes equal to or less than the federal poverty guidelines as revised annually shall be covered for Medicaid benefits; and~~
- ~~(6) Effective October 1, 1989, children under the age of six with family incomes equal to or less than the federal poverty guidelines as revised annually shall be covered for Medicaid benefits.~~
- (7) Effective October 1, 1990, children under the age of seven with family incomes equal to or less than the federal poverty guidelines as revised ~~annually~~ July 1, 1990, shall be covered for Medicaid benefits.

Services to pregnant women eligible under this section continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children eligible under this section, no resources test shall be applied."

Requested by: Senator Walker, Representative Gardner

-----CHRONICALLY MENTALLY ILL FUNDS

Sec. 73. Funds to provide expanded community-based services to adults with severe and persistent mental illness are to be allocated to the Department of Human Resources' regions on a per capita basis. Within each region, ninety percent (90%) of the funds shall be distributed to the area mental health programs on a per capita basis and ten percent (10%) to area mental health programs for special needs as determined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Division may reallocate any unexpended funds within the specified region.

Requested by: Senator Walker

-----DHR PLANNING FUNDS

Sec. 74. The Department of Human Resources may use funds that become available to it through gifts, federal or private grants, receipts from federal programs, or any other source in the 1990-91 fiscal year, for advance planning through the working drawings phase for a psychiatric facility at John Umstead Hospital.

Requested by: Senators Royall, Walker, Representative Gardner

-----BUDGET REQUIRED TO INCLUDE STATE COST OF LOCAL PROGRAMS

Sec. 75. Effective July 1, 1991, the Office of State Budget and Management and the Director of the Budget, with the advice of the Advisory Budget Commission, shall prepare the State budget in a format that adequately and fairly reflects the continuation costs for the State's share of locally operated programs established by statute or State appropriation. These continuation costs shall be computed using the same budget preparation guidelines and rules prepared by the Office of State Budget and Management for use in State agency and institution budgets. Furthermore, in the projections for the expansion costs related to employee compensation, the budget shall include the expansion costs necessary to cover the State's share of salary and salary-related items for employees in locally operated State-funded programs. Local governments or organizations spending State funds to operate local programs shall provide necessary information to the Office of State Budget and Management to establish the necessary continuation and expansion costs.

Requested by: Senator Walker, Representative Gardner

-----USE OF STATE FUNDS AT MCLEOD PROGRAM

Sec. 76. The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Human Resources, shall ensure that State funds appropriated in the 1990-91 fiscal year for the operation of the McLeod Center Residential Drug Program are expended only after other program receipts from the 1988-89, 1989-90, and 1990-91 fiscal years are expended. State funds appropriated for the 1990-91 fiscal year that are not required for the operation of the McLeod Center Residential Drug Program as a result of this section shall remain available to the Department of Human Resources for the operation of its programs.

Requested by: Senators Daniel, Bryan, Walker

-----REST HOME AIDE TRAINING RULE SUSPENSION

Sec. 77. The Social Services Commission shall not promulgate any rules requiring training for aides in domiciliary care facilities to be effective before June 1, 1991. The Legislative Research Commission Study Committee on Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes; and Necessity for Certificate of Need; and Continuing Care Issues shall consider requirements for aide training and State reimbursements to rest homes and shall make recommendations on these issues as part of its report to the Legislative Research Commission for transmittal to the 1991 General Assembly. Prior to adopting any rules regarding aide training, the Social Services Committee shall consider the Study Committee's recommendations.

Requested by: Senator Walker, Representative Gardner

-----DOMICILIARY RATE INCREASE

Sec. 78. Section 81 of Chapter 500 of the 1989 Session Laws, as rewritten by Section 131 of Chapter 752 of the 1989 Session Laws, reads as rewritten:

"Sec. 81. Effective January 1, 1990, the maximum monthly rate for ambulatory residents in domiciliary care facilities shall be ~~seven hundred twenty-four dollars (\$724.00)~~ \$724.00 and the maximum monthly rate for semi-ambulatory residents shall be ~~seven hundred sixty dollars (\$760.00)~~ \$760.00. Effective January 1, 1991, the maximum monthly rates for ambulatory residents shall be increased to ~~seven hundred thirty-four dollars (\$734.00)~~ \$756.00 and for semi-ambulatory residents ~~seven hundred seventy dollars (\$770.00)~~ \$793.00."

Requested by: Representative Diamont

-----LIMITATIONS ON THE STATE ABORTION FUND

Sec. 79. Section 93 of Chapter 479, 1985 Session Laws, as amended by Section 75 of Chapter 738 of the 1987 Session Laws, and as further amended by Section 72 of Chapter 500 of the 1989 Session Laws, shall remain in effect on and after July 1, 1990, with the following exceptions:

- (1) The phrase "within the first 135 days of pregnancy." is deleted wherever it appears in subdivision (1) of that section and the following phrase is substituted: "within the first 112 days of pregnancy.";
- (2) The phrase "Applicants under subparagraph c. shall only be eligible for services provided under this section one time" is deleted wherever it appears in subdivision (3) of that section and the following phrase is substituted: "Applicants shall be

eligible for services provided under this section only one time".

Any reference in Section 93 of Chapter 479, 1985 Session Laws, as amended, to the 1985-86 fiscal year or the 1986-87 fiscal year shall apply to the 1990-91 fiscal year.

PART XVII.-----COLLEGES AND UNIVERSITIES

Requested by: Senator Ward. Representatives J. Crawford, Tart

-----AID TO PRIVATE COLLEGES CLARIFICATION

Sec. 80. Section 30 of Chapter 500 of the 1989 Session Laws, as rewritten by Section 93 of Chapter 752 of the 1989 Session Laws, reads as rewritten:

"Sec. 30. (a) Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22. These funds shall provide up to four hundred fifty dollars (\$450.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each year.

These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in this account shall be provided as scholarship funds for needy North Carolina students during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be for the tuition grant program as defined in subsection (b) of this section.

(b) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, the sum of a sum, not to exceed one thousand one hundred fifty dollars (\$1,150) per academic year, which shall be distributed to the student as hereinafter provided. Initial allocations of these grants shall be at a level of ninety-five percent (95%) of the maximum grant for which a student is eligible. The State Education Assistance Authority shall project the number of students eligible, and the funds required, for the full academic year, and the Authority shall allocate grants at the highest proportion possible of the maximum grants.

The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted

by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority may not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at such times as it shall prescribe the grant to the approved institution on behalf, and to the credit, of the student.

In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the 10th classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on the behalf of the students.

In the event there are not sufficient funds to provide each eligible student with a full grant:

- (1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, ~~may (i) shall transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of (b), up to the level of ninety-seven percent (97%) of the maximum allocation allowed in this section; section, and (ii) may transfer sufficient funds to meet the full needs of the programs provided by this section if sufficient funds are available in the budgets of the Board of Governors of The University of North Carolina; and~~
- (2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

Any remaining funds shall revert to the General Fund.

(c) Expenditures made pursuant to this section may be used only for secular educational purposes at nonprofit institutions of higher learning."

Requested by: Senators Chalk, Ward, Representatives Lineberry, Tart

-----UNC INSTITUTIONS' CENTENNIAL CELEBRATION FUNDS

Sec. 81. The Board of Governors of The University of North Carolina may allocate from funds available to General Administration for the 1990-91 fiscal year up to \$100,000 per campus in the 1990-91 fiscal year for centennial celebrations at the constituent institutions.

Requested by: Senator Ward, Representative Jones

-----UNC EMPLOYEES PAYROLL DEDUCTIONS FOR UNC CHARITIES AND ATHLETICS

Sec. 82. G.S. 143-3.3(a) reads as rewritten:

"(a) All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein: Provided that this section shall not apply to assignments made in favor of hospitals, building and loan associations, prepaid legal services, uniform rental firms to allow employees of the Department of Transportation to rent uniforms that include day-glo orange shirts or vests as required by federal and State law, and medical, hospital, disability and life insurance companies: Provided further, that any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions, who is a member of any credit union organized pursuant to Chapter 54 of the North Carolina General Statutes having a membership at least one half of whom are employed by the State or its institutions, departments, bureaus, agencies or commissions, may authorize, in writing, the periodic deduction from his salary of wages as such employee of a designated lump sum, which shall be paid to such credit unions when said salaries or wages are payable, for deposit to such accounts, purchase of such shares or payment of such obligations as the employee and the credit union may agree: Provided further, that any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions, or any of its community colleges, who is a member of a domiciled State employees' association with a membership of not less than 5,000 members, the majority of whom are State employees, may authorize in writing the periodic deduction from his salary or wages a designated sum to be paid to the employees' association. This plan of payroll deductions for State employees and other association members shall become null and void at such time as the employee association engages in collective bargaining. Except as otherwise provided, nothing in this last proviso shall apply to local boards of education, county or municipal governments or any local governmental units. Provided further, that subject to the rules and regulations adopted by the State Controller,

any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions may authorize in writing the withholding from his salary or wages an amount to satisfy his pledge to the State Employees Combined Campaign. Provided further, that subject to any rules and regulations adopted by the State Controller, any employee of a local board of education or community college may authorize in writing the withholding from his salary or wages a periodic deduction of a designated sum to be paid to any organization which qualifies for recognition of exemption by the Internal Revenue Service as a charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code which has first been approved by his local board of education or community college board. Provided further, that subject to any rules and regulations adopted by the State Controller, any employee of a constituent institution of The University of North Carolina that processes its own payroll may authorize in writing the withholding from his salary or wages a periodic deduction of a designated sum to be paid to any organization that qualifies for recognition of exemption by the Internal Revenue Service as a charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code and that exists to support athletic or charitable programs at the constituent institution where the employee is employed; Provided further that such organization must be approved by the President of The University of North Carolina as existing to support such athletic or charitable programs; Provided, further that such withholding is allowed only at those eligible constituent institutions that have authorized withholding plans under this proviso. If a withholding plan results in additional costs to a campus, these costs shall be paid by those charitable organizations receiving contributions under the withholding plan."

Requested by: Senator Ward, Representative J. Crawford

-----PLAN FOR NURSE MIDWIFERY EDUCATION PROGRAMS

Sec. 83. The Board of Governors of The University of North Carolina shall plan for the development of nurse midwifery education programs at those institutions with appropriate supporting academic programs. The Board of Governors shall work with the Area Health Education Centers in planning for the development of clinical sites for the nurse midwifery education programs and shall report to the General Assembly by January 1991 on the cost required to implement the nurse midwifery programs in the 1991-92 academic year.

Requested by: Senator Ward, Representatives Hardaway, Tart

-----RURAL DEVELOPMENT PROGRAMS

Sec. 84. (a) The General Assembly finds that local capacity to plan and manage development efforts in rural areas has traditionally been impaired due to the lack of fiscal resources to attract and maintain the full-time, professional expertise required. Budget limitations and the resulting dearth of positions for planning and development specialists in rural areas have created the false impression that there is no demand for specially trained professionals to address these important rural needs. Consequently, few universities offer a curriculum tailored to the development needs of rural communities. This persistent shortage of trained planning and development personnel tends to exacerbate the already serious disadvantages rural areas face in trying to compete with the faster growing, more prosperous urban areas. The large number of relatively small units of government in rural areas with their attendant budget and staff limitations have resulted in a fragmentation of development efforts.

Where expertise, technical support, and adequate compensation are in short supply, the creation of a county-level planning and development position complete with an appropriately trained specialist can provide the focus, initiative, and direction necessary to help overcome programming deficiencies and problems of organization and coordination. By strengthening and broadening local and regional institutional capacity, rural areas will be in a better position to solve their problems and capture development opportunities.

(b) The Board of Governors of The University of North Carolina shall review the need for a two-year graduate degree program in rural economic planning and development, which may include a broad range of courses in relevant fields of study such as agriculture, rural sociology, economics, public administration, and regional development.

The Board of Governors may appoint a special ad hoc committee to advise the Board in planning the rural economic planning and development program. Membership of such a committee should include University of North Carolina System faculty and administrators, representatives of local governments, and experts in rural economic development.

(c) The North Carolina Rural Economic Development Center, Inc., shall study the development of (i) a program to provide rural economic development internships, (ii) a matching grant program to enable distressed counties to fund development personnel positions, and (iii) an economic development scholarship loan program. Any plans for those programs shall be developed as State-funded programs in accordance with the proposals in House Bill 2253.

(d) All studies and plans to be developed in this section shall be submitted to the General Assembly by February 1, 1991.

Requested by: Senator Ward, Representatives Rhyne, Tart

-----HIGHER EDUCATION OPPORTUNITY STUDY

Sec. 85. (a) The Legislative Research Commission may study the issue of higher education opportunity. The Chairmen shall consider appointing the members of the Committee as follows:

- (1) The Superintendent of Public Instruction, or his designee;
- (2) The Chairman of the State Board of Education, or his designee;
- (3) The President of the Community College System, or his designee;
- (4) The President of The University of North Carolina, or his designee;
- (5) The Chairman of the Association of Independent Colleges and Universities, or his designee;
- (6) Fifteen members appointed as follows:
 - a. Five members appointed upon the recommendation of the Governor;
 - b. Five members appointed from the House of Representatives; and
 - c. Five members appointed from the Senate.

(b) The Committee shall study the issue of providing tuition and fees grants for higher education to North Carolina students of proven academic ability who lack the necessary financial resources otherwise to attend a public four-year institution of higher education. The Committee shall report the results of this examination, including any legislative and appropriations recommendations, to the Legislative Research Commission for transmittal to the 1991 General Assembly.

(c) The Committee's study shall include:

- (1) An analysis of Louisiana's, and other states', initiatives in providing financial opportunity for higher education to their students of proven academic ability;
- (2) An analysis of the costs and future savings involved in providing such opportunity for North Carolina students;
- (3) A determination of what specific residence criteria, other than those currently being used by The University of North Carolina, if any, would need to be employed;
- (4) A determination of what academic standards eligible students would need to prove they have met, including high school course requirements, and standardized test scores;
- (5) A determination of what financial needs tests the students and their families must meet in order to qualify;
- (6) A determination of whether to allow a percentage deviation from the set standards for a certain number of students receiving financial help under this program;

- (7) A determination of what, if any, additional criteria students attending constituent institutions of higher education under this program must continue to meet to continue to receive financial aid under this program;
 - (8) A determination of what entity should administer this program, whether the Board of Governors of The University of North Carolina, the State Education Assistance Authority, or other entity; and
 - (9) Any additional determination or examination the Education Study Commission considers necessary to carry out its mandate.
- (d) The University of North Carolina and the Department of Public Instruction shall cooperate with the Legislative Research Commission Higher Education Opportunity Study Committee as it carries out the mandate established in this act.
- (e) Of the funds appropriated to the General Assembly for the 1990-91 fiscal year, the sum of \$20,000 may be allocated to the Legislative Research Commission for its work.

Requested by: Senator Ward, Representative Jones

-----ECU MRI FUNDS

Sec. 86. Section 92 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 92. (a) Effective July 1, 1989 funds appropriated to the Board of Governors of The University of North Carolina for the East Carolina University School of Medicine for Medicare education shall be allocated as follows:

- (1) That portion of the Medicare reimbursement that can be identified as having been generated through the effort and at the expense of the School's Medical Faculty Practice Plan shall be transferred to the appropriate Medical Faculty Practice Plan account within the School; and
- (2) The remainder shall be transferred to a special nonreverting account within the School.

Funds deposited in the account pursuant to subdivision (2) of this section shall be spent for nonrecurring items of equipment and facilities that are required to maintain the School of Medicine's teaching facilities within Pitt County Memorial Hospital and the Brody Medical Sciences Building.

(b) All revenue ~~heretofore~~ or subsequently received by the East Carolina University School of Medicine Medical Faculty Practice Plan from patients or their health insurance companies for treatment received in the Radiation Therapy Facility shall be retained by the School's Medical Faculty Practice Plan and used to defray current

operating expenses and for future support and enhancement of the facility.

(b1) All funds subsequently received by the East Carolina University School of Medicine from Pitt County Memorial Hospital for the lease of the Magnetic Resonance Imaging (MRI) building and equipment shall be retained by the School of Medicine in a nonreverting account and expended to defray current operating expenses and for future support and enhancement of the MRI facility.

(c) All the receipts in subsections (a), (b), and (b1) shall appear in the General Fund Budget Code (16066) at East Carolina University.

(d) This section shall expire June 30, 1991."

PART XVIII.-----COMMUNITY COLLEGES

Requested by: Senator Conder, Representatives J. Crawford, Tart
 -----RICHMOND COMMUNITY COLLEGE/CHILDBIRTH CLASSES

Sec. 87. Notwithstanding any other provision of law, the Board of Trustees of Richmond Community College may permit students under 16 years of age to participate in childbirth classes at the college under The Support Mother's Program. These students may not be included in the computation of budget full-time equivalent student enrollment for the college; however, community services funds may be used to operate this Program.

Requested by: Senator Ward, Representatives J. Crawford, Tart
 -----COMMUNITY COLLEGE TUITION INCREASE

Sec. 88. Section 79 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 79. The State Board of Community Colleges shall adopt tuition rates beginning in the fall quarter of ~~1989~~ 1990 in the amount of ~~ninety dollars (\$90.00)~~ one hundred five dollars (\$105.00) per quarter for in-State students and ~~eight hundred forty dollars (\$840.00)~~ nine hundred eighty-one dollars (\$981.00) per quarter for out-of-State students.

The State Board of Community Colleges shall adopt tuition rates beginning in the fall quarter of 1990 in the amount of twenty-five dollars (\$25.00) a course for occupational extension courses."

Requested by: Senator Ward, Representatives J. Crawford, Tart
 -----"TECH PREP" IMPLEMENTATION

Sec. 89. Of the funds available to the Department of Public Education for vocational education in the 1990-91 fiscal year, the sum of \$50,000 shall be allocated to the North Carolina Tech Prep

Leadership Development Center at Richmond Community College for assistance to local education agencies and community colleges in planning and implementing "Tech Prep" across the State. The Department of Community Colleges shall allocate \$50,000 from funds available to it for the 1990-91 fiscal year for the North Carolina "Tech Prep" Leadership Development Center at Richmond Community College.

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----STATE BOARD OF COMMUNITY COLLEGES GUIDELINES

Sec. 90. Notwithstanding any other provision of law, the State Board of Community Colleges shall establish budget guidelines not inconsistent with Section 80 of Chapter 752 of the 1989 Session Laws for the expenditure of individual community college budgets for the 1990-91 fiscal year. In establishing these guidelines the Board shall assure that statewide priorities are met, to the extent resources are available. The State Board of Community Colleges shall establish parameters for expenditure of appropriations to assure that:

- (1) Literacy funds shall not be reduced or spent for any other purpose and, to the maximum extent possible, anyone requesting literacy education will be served;
- (2) New Industry Training, Focused Industrial Training, and Small Business Center funds shall not be reduced without full justification and assurances that needs are being met;
- (3) Salary increase funds shall be used to provide a four percent (4%) across-the-board salary increase to all full-time and permanent part-time employees. Two percent (2%) salary increase funds shall be used to provide merit pay or to maintain quality in educational programs through expenditures for personnel only.

The State Board is not obligated to make budget reduction allocations on a pro rata basis and may specify various programs for reduction.

The State Board shall require each college to submit a plan detailing how its budget reduction will be accomplished in order to assure a balanced educational program that meets statewide priorities.

The State Board shall report to the 1991 General Assembly on these guidelines and their implementation by each college.

Requested by: Senator Ward, Representative Tart

-----COMMUNITY COLLEGE BOOKSTORE SALES

Sec. 91. G.S. 115D-5 is amended by adding a new subsection to read:

"(a1) Notwithstanding G.S. 66-58(c)(3) or any other provisions of law, the State Board of Community Colleges may adopt rules governing the expenditure of funds derived from bookstore sales by community colleges. These expenditures shall be consistent with the mission and purpose of the Community College System. Profits may be used in the support and enhancement of the bookstores, for student aid or scholarships, for expenditures of direct benefit to students, and for other similar expenditures authorized by the board of trustees, subject to rules adopted by the State Board. These funds shall not be used to supplement salaries of any personnel."

PART XIX.-----PUBLIC SCHOOLS

Requested by: Senator Ward, Representatives Tart, J. Crawford
-----SMALL SCHOOL PROGRAM ALLOTMENTS

Sec. 92. G.S. 115C-416 reads as rewritten:

" § 115C-416. Power to allot funds for teachers and other personnel.

The Board shall have power to provide for the enrichment and strengthening of educational opportunities for the children of the State, and when sufficient State funds are available to provide first for the allotment of such a number of teachers as to prevent the teacher loan from being too great in any school, the Board is authorized, in its discretion, to make an additional allotment of teaching personnel to local school administrative units of the State to be used either jointly or separately, as the Board may prescribe. Such additional teaching personnel may be used in the local school administrative units as librarians, special teachers, or supervisors of instruction and for other special instructional services such as art, music, physical education, adult education, special education, or industrial arts as may be authorized and approved by the Board. The salary of all such personnel shall be determined in accordance with the State salary schedule adopted by the Board.

In addition, the Board is authorized and empowered in its discretion, to make allotments of funds for clerical assistants for classified principals and for school social workers.

The Board is further authorized, in its discretion, to allot teaching personnel to local school administrative units for experimental programs and purposes.

The Board may also allot teaching and other positions, within funds available, to local school administrative units to allow local units to place personnel occupying those positions in private hospitals and treatment facilities for the limited purpose of providing education to students confined to those institutions. The Board shall adopt rules to ensure that any such placements do not contribute to the profitability

of private institutions and that they are otherwise in accordance with State and federal law."

Requested by: Senator Ward. Representatives Tart, J. Crawford
-----LEAVE ACCUMULATION/PUBLIC SCHOOL EMPLOYEES

Sec. 93. G.S. 115C-272(b) reads as rewritten:

"(b) Superintendents shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All superintendents employed by any local school administrative unit who are paid from local funds shall be paid promptly as provided by law and as State allotted superintendents are paid. Superintendents paid from State funds shall be paid as follows:

- (1) Salary payments to superintendents shall be made monthly on the basis of each calendar month of service. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees. Included within the 12 months' employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.
- (2) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year: Provided, that superintendents may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until ~~December 31~~ June 30 of each year. On ~~December 31~~ June 30 of each year, any superintendent with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to ~~January 1~~ July 1 of the ~~next~~ same year. All vacation leave taken by the superintendent will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision

shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

- (3) Each local board of education shall sustain any loss by reason of an overpayment to any superintendent paid from State funds.
- (4) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year."

Sec. 94. G.S. 115C-316(a) reads as rewritten:

"(a) School officials and other employees shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All school officials and other employees employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted school officials and other employees are paid.

Public school employees paid from State funds shall be paid as follows:

- (1) Employees Other than Superintendents, Supervisors and Classified Principals on an Annual Basis. -- Salary payments to employees other than superintendents, supervisors, and classified principals employed on an annual basis shall be made monthly at the end of each calendar month of service. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth ($1/12$) of the annual rate for state employees for each calendar month of employment. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

- (2) School Employees Paid on an Hourly or Other Basis. -- Salary payments to employees other than those covered in G.S. 115C-272(b)(1), 115C-285(a)(1) and (2), 115C-302(a)(1) and (2), and 115C-316(a)(1) shall be made at a time determined by each local board of education. Expenditures for the salary of these employees from State funds shall be within allocations made by the State Board of Education and in accordance with rules and regulations approved by the State Board of Education concerning allocations of State funds: Provided, that any individual school employee employed for a term of 10 calendar months may be paid in 12 monthly installments if the employee so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the employee. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract between the employee and the said administrative unit. Included within the term of employment shall be provided for full-time employees annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for State employees for each calendar month of employment, to be taken under policies determined by each local board of education. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment, each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment as those designated by the State Personnel Commission for State employees.
- (3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. The first 10 days of annual leave earned by a 10- or 11-month employee during any fiscal year period shall be scheduled to be used in the school calendar adopted by the respective local boards of education. Vacation days shall not be used for extending the term of employment of individuals. Ten- or 11-month employees may accumulate annual vacation leave days as follows:

annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any of these employees with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by these employees will be upon the authorization of their immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

- (4) Twelve-month school employees other than superintendents, supervisors and classified principals paid on an hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until ~~December 31~~ June 30 of each year. On ~~December 31~~ June 30 of each year, any employee with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to ~~January 1~~ July 1 of the ~~next~~ same year. All vacation leave taken by the employee will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education

shall adopt rules and regulations for the administration of this subdivision.

- (5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.
- (6) Each local board of education shall sustain any loss by reason of an overpayment to any school official or other employee paid from State funds."

Requested by: Senator Ward, Representatives Tart, J. Crawford

-----PROSPECTIVE TEACHER SCHOLARSHIP LOAN
PROGRAM/EXPANDED TO COVER ADDITIONAL CERTIFIED
EMPLOYEES

Sec. 95. G.S. 115C-471 reads as rewritten:

"§ 115C-471. *Fund administered by State Superintendent of Public Instruction; rules and regulations.*

The Scholarship Loan Fund for Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under the following rules and regulations, and under such further rules and regulations as the State Board of Education shall in its discretion promulgate:

- (1) Any resident of North Carolina who is interested in preparing to teach in the public schools of the State shall be eligible to apply in writing to the State Superintendent of Public Instruction for a regular scholarship loan in the amount of not more than two thousand dollars (\$2,000) per academic school year.
- (2) All scholarship loans shall be evidenced by notes made payable to the State Board of Education which shall bear interest at the rate of six percent (6%) per annum from and after September 1 following fulfillment by a prospective teacher of the requirements for a ~~teacher's~~ certificate based upon the ~~bachelor's~~ entry level degree; or in the case of persons already teaching in the public schools who obtain scholarship loans such notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of such scholarship loans; or in the event any such scholarship shall be terminated under the provisions of subdivision (3) of this

section then such notes shall bear interest from the date of such termination. A minor recipient who signs such note or notes shall also obtain the endorsement thereon by a parent, if there be a living parent, unless such endorsement is waived by the Superintendent of Public Instruction. Such minor recipient shall be obligated upon such note or notes as fully as if he or she were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon such note or notes.

- (3) Each recipient of a scholarship loan under the provisions of this program shall be eligible for scholarship loans each year until he has qualified for a ~~teacher's~~ certificate based upon the ~~bachelor's~~ entry level degree, but he shall not be so eligible for more than ~~four years nor after~~ the minimum number of years required by the college or university for qualifying for said certificate. The permanent withdrawal of any recipient from college or failure of such recipient to do college work in a manner acceptable to the State Superintendent of Public Instruction will immediately forfeit such recipient's right to retain such scholarship and subject such scholarship to termination by the State Superintendent of Public Instruction in his discretion. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.
- (4) Except under emergency conditions applicable to the State Superintendent of Public Instruction, recipients of scholarship loans shall enter the public school system of North Carolina at the beginning of the next school term after qualifying for a ~~teacher~~ certificate based upon the ~~bachelors~~ entry level degree or in case of persons already teaching in the public schools at the beginning of the next school term after the use of such loan. All teaching service for which the recipient of any scholarship loan is obligated shall be rendered within seven years after the completion of the use of each such scholarship loan.
- (5) For each full school year taught in a North Carolina public school, the recipient of a scholarship loan shall receive credit upon the amount due by reason of such loan equal to all interest accrued upon the loan to that time plus a credit of two thousand dollars (\$2,000) upon the principal amount of such obligation or such lesser amount as may remain due upon said principal; provided, however, that in lieu of teaching in the public school, a recipient may elect to pay in cash the full amount of scholarship loans received plus

interest then due thereon or any part thereof which has not been canceled by the State Board of Education by reason of teaching service rendered.

- (6) If any recipient of a scholarship loan who is fulfilling his obligation under subdivision (4) of this section dies within the seven-year period, or if any recipient dies during the period of attendance at a college or university under a scholarship loan, any balance that has not been discharged through service shall be automatically canceled.

If any recipient of a scholarship loan fails to fulfill his obligations under subdivision (4) of this section, other than as provided above, the amount of his loan and accrued interest, if any, shall be due and payable from the time of failure to fulfill such obligations.

- (7) The State Superintendent of Public Instruction shall award scholarship loans with due consideration to such factors and circumstances as: aptitude, purposefulness, scholarship, character, financial need, and areas or subjects of instruction in which the demands for teachers are greatest. Since the primary purpose of this Article is to attract worthy young people to the teaching profession, preference shall be given to high school seniors in the awarding of scholarships."

Requested by: Senator Ward, Representative Diamont

-----SCHOOL

TRANSPORTATION

BUDGET

REDUCTION/IMPLEMENTATION

Sec. 96. (a) G.S. 115C-240(d) reads as rewritten:

"(d) The State Board of Education shall assist local boards of education by establishing guidelines and a framework through which local boards may establish, review and amend school bus routes prepared pursuant to G.S. 115C-246. The State Board shall also require local boards to implement the Transportation Information Management System or an equivalent system approved by the State Board of Education, no later than July 1, 1992. The State Board of Education shall also assist local boards of education with reference to the acquisition and maintenance of school buses or any other question which may arise in connection with the organization and operation of school bus transportation systems of local boards."

(b) G.S. 115C-246(a) reads as rewritten:

~~"(a) The principal of the school to which a school bus has been assigned~~ superintendent of the local school administrative unit shall, prior to the commencement of each regular school year, prepare and submit to the superintendent of the local school administrative unit a

plan for a definite route, including stops for receiving and discharging pupils, for each school bus assigned to such school so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto. The superintendent ~~shall examine such plan and~~ may, in his discretion, obtain the advice of the State Board of Education with reference thereto, to the plan. ~~The superintendent shall make such changes in the proposed bus routes as he shall deem proper for the said purposes and, thereupon, shall approve the route. When so approved the~~ The buses shall be operated upon the route so established and not otherwise, except as provided in this Article. From time to time the principal may suggest changes in any such bus route as he shall deem proper for the said purposes, and the same shall be effective when approved by the superintendent of the local school administrative unit."

(c) The State Board of Education may modify its formula for allocating school transportation funds, in accordance with G.S. 115C-240(e), so as to make the most efficient use of the funds. The State Board of Education may use funds saved by operating the school transportation system more efficiently to complete the implementation of the Transportation Information Management System.

(d) The Department of Public Instruction shall report to the Joint Legislative Commission on Governmental Operations prior to December 1, 1990, on its efforts to lower fuel costs and improve efficiency in the student transportation system.

Requested by: Senator Ward, Representatives J. Crawford, Tart
 -----CAREER DEVELOPMENT PROGRAM TRANSITION

Sec. 97. Section 7 of Chapter 778 of the 1989 Session Laws reads as rewritten:

"Sec. 7. Existing Career Development and Lead Teacher Pilot Programs.

(a) Notwithstanding the provisions of Article 24B of Chapter 115C of the General Statutes, Article 24D of Chapter 115C of the General Statutes, or any other provision of law, funding for the career development pilot projects and the lead teacher pilot projects shall continue through the 1989-90 fiscal year; Provided, however, that any additional compensation received by an employee as a result of the unit's participation in the pilot program for the 1989-90 fiscal year and for subsequent fiscal years shall be paid as a bonus or supplement to the employee's regular salary.

Funding of these pilot projects shall continue for subsequent fiscal years only if the pilot units successfully submit local school improvement plans pursuant to the Performance-based Accountability

Program, during the 1989-90 school year and during subsequent school years.

(b) ~~Beginning with the 1993-94 fiscal year, year and for each year thereafter, the career development and the lead teacher pilot units shall receive only the amount of State funds available for school units participating in a differentiated pay plan pursuant to the School Improvement and Accountability Act of 1989; seven percent (7%) of teacher and administrator salaries and of the employer's contributions for social security and retirement, so long as they participate in differentiated pay plans in accordance with G.S. 115C-238.4; they shall receive no additional State funding as career development pilot units or lead teacher pilot units.~~

For fiscal years 1990-91 through 1993-94, the provisions of G.S. 115C-363.28 regarding flexible funding continue to apply to the lead teacher pilot units.

(c) ~~The local school improvement plan for each career development pilot program shall include a schedule of modifications to the career development differentiated pay program. This schedule shall result in an incremental reduction or increase, as appropriate, in the amount of funds allocated for differentiated pay so that, for the 1993-94 fiscal year and subsequent fiscal years, the cost of the differentiated pay plan equals (i) seven percent (7%) of teacher and administrator salaries and of the employer's contributions for social security and retirement and (ii) the amount of State and local funds available for differentiated pay for school units participating in differentiated pay plans pursuant to the School Improvement and Accountability Act of 1989, pay.~~

For the 1990-91 fiscal year, the total amount appropriated for the career development pilot units is \$4,693,368 less than it was for the 1989-90 fiscal year. It is the intent of the General Assembly to phase out the amount appropriated for the career development pilot units by reducing the amount appropriated by equal increments over the 1991-92, 1992-93, and 1993-94 fiscal years.

The State Board of Education shall require the pilot units to modify their differentiated pay programs so that the schedules of incremental reductions or increases result in these reductions.

(d) ~~If an employee in a career development pilot unit is recommended for Career Status I or II and that status is approved by the local board of education prior to the beginning of the 1989-90 school year, the local board of education may pay that employee a bonus or supplement to his regular salary. For the 1989-90 fiscal year only, the local board of education may use any State or local funds available to it for the career development pilot program to pay these bonuses or supplements.~~

(e) Effective at the beginning of the 1989-90 school year, an employee may be considered for Career Status II no earlier than his third year in Career Status I; an employee may be considered for Career Status III no earlier than his third year in Career Status II.

(f) Any career ladder pilot project in a school unit that has resulted from a merger of school units, within the last calendar year preceding the effective date of this act, may be modified by the local school board, upon the recommendation of the State Superintendent of Public Instruction and with the approval of the State Board of Education. This For the 1989-90 fiscal year, this modification shall require no more funds than allocated to the particular project by the State Board of Education from funds appropriated to the State Board of Education in Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989. For the 1990-91 fiscal year through the 1993-94 fiscal year, the merged unit shall receive (i) the amount of funds that was previously allocated to the particular pilot project, reduced by the State Board pursuant to subsection (c) of this section, and (ii) the amount of funds it is entitled to receive pursuant to G.S. 115C-238.4(c)(1), for the portion of the merged unit that did not participate in the pilot project.

(g) No provision of this section shall be construed to allow a local school administrative unit to pay any teacher, in salary and State-funded bonus or supplement, less than it paid that teacher on a monthly basis during the prior school year, so long as the teacher qualifies for a bonus or supplement under the local differentiated pay plan."

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----BASIC EDUCATION FUNDS

Sec. 98. (a) Section 61 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 61. (a) Funds are appropriated in Section 3 of this act to the Department of Public Education for further implementation of the Basic Education Program in public schools. These funds will provide for the fifth and sixth years of the planned eight-year implementation schedule. The following information chart shows the major increases in State funds over the 1988-89 fiscal year, expansion budget funds for the Basic Education Program for 1989-90 totaling \$69,277,440 and an additional \$44,496,768 in 1990-91 for a total of \$113,774,208 in 1990-91.

BASIC EDUCATION PROGRAM

Basic Education Plan:

	1989-90	1990-91
1. Additional Teachers	\$ 46,735,714	\$ 90,342,391
2. Vocational Education Teachers	1,039,116	2,078,823
3. In-School Suspension	-	1,726,921
4. Instructional Support	15,477,126	39,113,549
5. Instructional/Lab Clerical Assistants	-	17,073,432
6. Athletic Trainer Supplement	15,000	15,000
7. Assistant Principals - Extension of Term	-	11,166,375
8. Asst/Associate Superintendents	-	4,767,421
9. Clerical Assistants	6,010,484	11,637,563
10. Supervisors	-	2,611,375
TOTAL BASIC EDUCATION PLAN	\$ 69,277,440	\$ 180,532,850
		113,774,208

Of these funds, the sum of \$12,925,543 for the 1990-91 fiscal year shall be used to reduce class size in grades 10-12.

With regard to the remainder of these funds, local boards of education may request waivers of State laws pertaining to the purposes for which State funds for the public schools may be used, pursuant to G.S. 115C-238.3(d), so as to use these funds for purposes, other than for classroom teachers, to implement the Basic Education Program. The General Assembly urges the State Superintendent and the State Board of Education to construe their authority to grant such waivers under G.S. 115C-238.6 broadly when they consider any such requests for waivers.

(b) The General Assembly urges local school administrative units to use funds available to them to reduce class size in science, mathematics, and language arts classes."

(b) Section 72(l) of Chapter 752 of the 1989 Session Laws reads as rewritten:

"(f) Of the funds appropriated to the Department of Public Education in Section 3 of this act for the 1989-91 fiscal biennium for aid to local school administrative units, the State Board of Education shall use up to \$50,000 for the 1989-90 fiscal year and up to \$100,000 for the 1990-91 fiscal year for the consortium established by this section. No more than one-half of the monies for the 1989-90 fiscal year or one-fourth of the monies for the 1990-91 fiscal year

shall be used for administrative purposes. The remainder shall be used to provide instructional support for the participants under the plan devised by the policy board."

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----COMPLETION OF BASIC EDUCATION PROGRAM

Sec. 99. (a) The General Assembly finds that given the current revenue situation of the State, the original implementation schedule of the Basic Education Program cannot be met and that the recently enacted School Improvement and Accountability Act has moved the State to a student performance orientation that is predicated on school systems using their resources flexibly to address unique local needs. The General Assembly is committed to the improvement of education and to the complete implementation of the strongest possible Basic Education Program; therefore, the Legislative Study Commission on the Basic Education Program is hereby created to advise the General Assembly on ways that the Basic Education Program can be strengthened and on a lengthened implementation schedule for the Basic Education Program.

The Commission shall consist of 23 members: the Superintendent of Public Instruction; the chairman of the State Board of Education; one member of the Senate, one member of the House of Representatives, one school superintendent, one classroom teacher, and three members at large, appointed by the Governor; four members of the Senate, one school principal, one PTA member, and one member at large appointed by the President Pro Tempore of the Senate; and four members of the House of Representatives, one classroom teacher, one school board member, and one member at large, appointed by the Speaker of the House of Representatives.

(b) The President Pro Tempore of the Senate shall designate one of his appointees who is a member of the Senate as cochairman and the Speaker of the House of Representatives shall designate one of his appointees who is a member of the House of Representatives as cochairman. Each chairman shall serve as chairman until he ceases to be a member of the General Assembly.

(c) The Commission shall study the Basic Education Program, how it has been implemented to date, and what effect the Basic Education Program has had on educational achievement throughout the State. The Commission shall also examine the remainder of the schedule of implementation of the Basic Education Program, review all items to be funded under the Basic Education Program, consider the relationship between the Basic Education Program and the School Improvement and Accountability Act, and recommend any changes or

modifications to the Basic Education Program and the School Improvement and Accountability Act that it deems appropriate.

(d) The Commission shall submit a report on its activities to the Joint Legislative Education Oversight Commission prior to February 15, 1991. The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before March 31, 1991, by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its final report, the Commission shall terminate.

(e) The Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairmen. The Commission may meet in the State Legislative Building or the Legislative Office Building.

(f) Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 138-5, G.S. 138-6, or G.S. 120-3.1, as appropriate.

(g) The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisor of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services Commission. The expenses relating to clerical employees shall be borne by the Commission.

(h) When a vacancy occurs in the membership of the Commission the vacancy shall be filled by the same appointing officer who made the initial appointment.

(i) All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

Sec. 100. G.S. 115C-81(a) reads as rewritten:

"(a) The State Board of Education shall adopt a Basic Education Program for the public schools of the State. Before it adopts or revises the Basic Education Program, the State Board shall consult with an Advisory Committee, including at least eight members of local boards of education, that the State Board appoints from a list of nominees submitted by the North Carolina School Boards Association. The State Board shall report annually to the General Assembly on any changes it has made in the program in the preceding 12 months and any changes it is considering for the next 12 months.

The State Board shall implement the Basic Education Program within funds appropriated for that purpose by the General Assembly

and by units of local government. It is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local school administrative unit by July 1, ~~1993~~, 1995."

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----TEACHING FELLOWS FUND USES

Sec. 101. (a) G.S. 115C-363.23A(e) reads as rewritten:

"(e) The Commission shall forgive the loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Commission shall also forgive the loan if it finds that it is impossible for the recipient to teach for four years, within seven years after graduation, at a North Carolina public school or at a school operated by the United States government in North Carolina, because of the death or permanent disability of the recipient."

(b) G.S. 115C-363.23A(f) reads as rewritten:

"(f) All funds appropriated to or otherwise received by the Teaching Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a revolving fund. This revolving fund ~~may~~ shall be used ~~only~~ for scholarship loans granted under the Teaching Fellows Program. With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used for campus and summer program support, and costs related to disbursement of awards and collection of loan repayments."

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----DPI GRANT FUNDS

Sec. 102. G.S. 115C-21(a) reads as rewritten:

"(a) Administrative Duties. -- It shall be the duty of the Superintendent of Public Instruction:

- (1) To organize and establish a Department of Public Instruction which shall include such divisions and departments as are necessary for supervision and administration of the public school system, to administer the funds for the operation of the Department of Public Instruction, and to enter into contracts for the operations of the Department of Public Instruction.
- (2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by his personal appearance at

public gatherings, and by information furnished to the press of the State.

- (3) To report biennially to the Governor 30 days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for such changes in the school law as shall occur to him.
- (4) To have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction.
- (5) To have under his direction, in his capacity as the constitutional head of the public school system, all those matters relating to the supervision and administration of the public school system.
- (6) To create a special fund within the Department of Public Instruction to manage funds received as grants from nongovernmental sources in support of public education. The Superintendent may accept grants and gifts from corporations and other sources made in support of public education and may hold and disburse such funds, in accordance with the purposes, conditions, and limitations associated with such grants and gifts. Any special fund created pursuant to this subdivision shall be subject to audit by the State Auditor."

Requested by: Senator Ward, Representative Tart

-----ELIMINATE EDUCATION REPORTS

Sec. 103. (a) G.S. 115C-363.10 is repealed.

(b) Section 55(b)(12)a. of Chapter 479 of the 1985 Session Laws is repealed.

(c) Section 68 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 68. Funds are appropriated to the Department of Public Education for the 1989-91 fiscal biennium for additional teacher positions to be used to expand curricular offerings in accordance with the Basic Education Program. Local boards of education shall use positions allocated to them with these funds to expand curricular offerings to those contained in the Basic Education Program at any grade level and in any of the identified curricular offerings based on the identification of local needs, priorities, and local schedules for implementing the Basic Education Program.

The local board of education may, with the approval of the State Board of Education, use the funds allocated to it for expanded curricular offerings to otherwise provide a curricular offering at that school, as called for in the Basic Education Program. The State Board of Education shall monitor the alternative uses of these funds ~~and shall report on such uses by February 1 of each year to the President of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division, funds."~~

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----CHILD NUTRITION STAFF DEVELOPMENT

Sec. 104. Section 56 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 56. Of the funds appropriated to the Department of Public Education for the 1989-90 fiscal year and for the 1990-91 fiscal year for aid to local school administrative units for staff development, the State Board of Education shall allocate \$280,000 each fiscal year to local school units for staff development of school food service personnel."

Requested by: Senator Basnight

-----UNIFORM EDUCATION REPORTING SYSTEM FUNDS

Sec. 105. Of the funds available to the Department of Public Education for the 1990-91 fiscal year for aid to local school administrative units, the Department shall use \$438,642 to reimburse 13 local school administrative units for expenses incurred in converting to AS/400 equipment as required to implement the Uniform Education Reporting System.

Before providing these funds to any of the 13 local units that request it, the Department of Public Education shall first conduct an electronic data processing audit of the local school administrative unit that is to receive the funds to determine: (i) if the unit had used the previous equipment that was replaced by the AS/400 in a manner consistent with standard data processing management and operational procedures; and (ii) if the unit is using the current equipment in a manner consistent with standard data processing management and operational procedures. The results of the electronic data processing audits shall be delivered to the Fiscal Research Division, the Legislative Automated Systems Division, and, if requested, to the Joint Legislative Commission on Governmental Operations.

Requested by: Senator Taft, Representative Jones

-----LIMIT UNIFORM EDUCATION REPORTING SYSTEM FINES

Sec. 106. G.S. 115C-438 reads as rewritten:

" § 115C-438. *Provision for disbursement of State money.*

The deposit of money in the State treasury to the credit of local school administrative units shall be made in monthly installments, and additionally as necessary, at such time and in such a manner as may be most convenient for the operation of the public school system. Before an installment is credited, the school finance officer shall certify to the State Board of Education the expenditures to be made by the local school administrative unit from the State Public School Fund during the month. This certification shall be filed on or before the fifth day following the end of the month preceding the period in which the expenditures will be made. The State Board of Education shall determine whether the moneys requisitioned are due the local school administrative unit, and upon determining the amount due, shall cause the requisite amount to be credited to the local school administrative unit. Upon receiving notice from the State Treasurer of the amount placed to the credit of the local school administrative unit, the finance officer may issue State warrants up to the amount so certified.

The State Board of Education may withhold money for payment of salaries for administrative officers of local school administrative units if any report required to be filed with State school authorities is more than 30 days overdue. The State Board of Education shall withhold money for payment of salaries for the superintendent, finance officer, and all other administrative officers charged with providing payroll information pursuant to G.S. 115C-12(18), if the local school administrative unit fails to provide the payroll information to the State Board in a timely fashion and substantially in accordance with the standards set by the State ~~Board~~. Board; provided, however, the maximum amount withheld from any local school administrative unit shall be twenty-five thousand dollars (\$25,000).

Money in the State Public School Fund and State bond moneys shall be released only on warrants drawn on the State Treasurer, signed by such local official as may be required by the State Board of Education."

Requested by: Senator Ward, Representative J. Crawford

-----DIFFERENTIATED PAY FUNDS ALLOCATION

Sec. 107. (a) G.S. 115C-238.4 reads as rewritten:

" § 115C-238.4. *Differentiated pay.*

(a) Local school administrative units may include, but are not required to include, a differentiated pay plan for certified instructional staff, certified instructional support staff, and certified administrative staff as a part of their local school improvement plans. Units electing

to include differentiated pay plans in their school improvement plans shall base their differentiated pay plans on:

- (1) The Career Development Pilot Program, G.S. 115C-363 *et seq.*;
- (2) The Lead Teacher Pilot Program, G.S. 115C-363.28 *et seq.*;
- (3) A locally designed school-based performance program, subject to limitations and guidelines adopted by the State Board of Education;
- (4) A differentiated pay plan that the State Board of Education finds has been successfully implemented in another state; or
- (5) A locally designed plan including any combination or modification of the foregoing plans.

(b) Support among affected staff members is essential to successful implementation of a differentiated pay plan; therefore, a local board of education that decides that a differentiated pay plan should be included in its local school improvement plan shall present a proposed differentiated pay plan to affected staff members for their review and vote. The vote shall be by secret ballot. The local board of education shall include the proposed differentiated pay plan in its local school improvement plan only if the proposed plan has the approval of a majority of the affected paid certificated instructional and instructional support staff and a majority of the affected certificated administrators.

Every three years after a differentiated pay plan receives such approval, the local board of education shall present a proposed plan to continue, discontinue, or modify that differentiated pay plan to affected staff members for their review and vote. The vote shall be by secret ballot. The local board of education shall include the proposed plan in its local school improvement plan only if the proposed plan has the approval of a majority of the affected paid certificated instructional and instructional support staff and a majority of the affected certificated administrators.

(c) Local school administrative units electing to participate in a differentiated pay plan shall receive State funds according to the terms of the plan but not to exceed:

- (1) 1990-91: two percent (2%) of teacher and administrator salaries, and the employer's contributions for social security and retirement;
- (2) 1991-92: three percent (3%) of teacher and administrator salaries, and the employer's contributions for social security and retirement;
- (3) 1992-93: four percent (4%) of teacher and administrator salaries, and the employer's contributions for social security and retirement; ~~and~~

- (4) ~~1993-94 and thereafter: seven percent (7%); five and one-half percent (5 1/2%) of teacher and administrator salaries, and the employer's contributions for social security and retirement, retirement; and~~
- (5) 1994-95 and thereafter: seven percent (7%) of teacher and administrator salaries, and the employer's contributions for social security and retirement.

Any differentiated pay plan developed in accordance with this section shall be implemented within State and local funds available for differentiated pay.

(d) Attainment of the equivalent of Career Status I shall be rewarded through a new salary schedule that provides a salary differential when a certified educator successfully completes his probationary period.

(e) Any additional compensation received by an employee as a result of the unit's participation in the Program shall be paid as a bonus or supplement to the employee's regular salary. If an employee in a participating unit does not receive additional compensation, such failure to receive additional compensation shall not be construed as a demotion, as that term is used in G.S. 115C-325.

Payments of bonuses or supplements shall be made no more frequently than once every calendar quarter: Provided, however, prior to the 1994-95 school year, payments in the career development pilot units may be made on a monthly basis."

(b) Funds appropriated to the Department of Public Education in Section 3 of this act to implement the differentiated pay plans under the School Improvement and Accountability Act of 1989 for the 1990-91 school year shall not revert at the end of the 1990-91 fiscal year but shall remain available for expenditure until all bonuses or supplements for the 1990-91 school year have been paid.

Requested by: Senator Ward, Representative J. Crawford

-----STUDY OF NONCERTIFIED EMPLOYEES' SALARIES

Sec. 108. The State Board of Education and the Superintendent of Public Instruction shall submit a joint report to the 1991 General Assembly on the disposition of the two percent (2%) salary reserve funds for noncertified public school employees established by Section 38(c) of Chapter 752 of the 1989 Session Laws. The report shall address:

- (1) Continuing discrepancies between the actual current salaries of noncertified public school employees and the salaries of State employees;
- (2) Discrepancies between the actual salaries of noncertified employees and the salary levels recommended for the

- employees in studies conducted by the State Board of Education during the past 10 years, as adjusted for inflation;
- (3) Salaries and numbers of noncertified employees at or below the poverty level, as established by the federal government; and
 - (4) A long-term, comprehensive plan to upgrade the salaries of noncertified public school employees so as to be consistent with the salaries of comparable State employees, consistent with recommendations contained in studies authorized and funded by the State Board of Education, and to increase the salaries of public school employees above the designated poverty level.

This plan shall make recommendations regarding groups in need of salary increases consistent with the above criteria and should recommend a multiyear plan with a maximum of six years to implement these increases, providing complete cost information.

Requested by: Senator Ward, Representatives Bowen, Tart
-----SAMPSON SCHOOL FUNDS/DEADLINE EXTENDED

Sec. 109. Funds in the amount of \$2,000,000 awarded from the Critical School Facility Needs Fund by the Commission on School Facility Needs to the Sampson County Board of Education and the Sampson County Commissioners to construct school facilities as approved by the Commission on School Facility Needs shall remain available to the Sampson County Board of Education and the Sampson County Commissioners until December 1, 1991.

Requested by: Senator Basnight, Representatives Tart, J. Crawford
-----SCHOOL PSYCHOLOGIST SALARY RECLASSIFICATION

Sec. 110. Of the funds appropriated to the Department of Public Education for the 1990-91 fiscal year for aid to local school administrative units, the State Board of Education shall use \$800,000 for a salary reclassification for school psychologists. The starting salary for school psychologists shall be Step 5, corresponding to 5 years of experience, on the salary schedule for certified personnel of the public schools who are classified as "G" teachers. Certified psychologists who were employed in the public schools prior to the 1990-91 fiscal year shall be placed on the salary schedule at an appropriate step based on their years of experience.

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----NATIONAL CONFERENCE ON GOVERNORS' SCHOOLS

Sec. 111. Of the funds appropriated to the Department of Public Education for the 1990-91 fiscal year for aid to local school

administrative units, the State Board of Education may allocate \$20,000 to provide support to conduct the Fourth National Conference on Governors' Schools.

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----NORTH CAROLINA GEOGRAPHIC ALLIANCE NETWORK FUNDS

Sec. 112. Of the funds appropriated to the Department of Public Education for the 1990-91 fiscal year for aid to local school administrative units, the State Board of Education may use up to \$50,000 to fund the North Carolina Geographic Alliance Network Program, which is headquartered at East Carolina University. The funds shall be used to:

- (1) Increase communication and cooperation between the professional geographic community and the network of Regional Education Centers;
- (2) Increase the number of in-service workshops conducted by professional geographers for the Regional Education Centers and local education agencies;
- (3) Increase the membership of professional geographers in the North Carolina Council for Social Studies;
- (4) Increase the number of professional geographers doing sessions at the annual meetings of the North Carolina Council for Social Studies;
- (5) Increase advisory interaction of professional geographers with the North Carolina Board of Education with regard to geography in the curriculum; and
- (6) Increase involvement of public school teachers with the North Carolina Geographic Society.

Requested by: Senator Ward, Representatives Jeralds, Tart
-----CLASS SIZE WAIVERS/TEACHER POSITIONS

Sec. 113. The Department of Public Instruction shall monitor and provide a report to the General Assembly by May 1, 1991, and annually thereafter showing the school units that have been granted class size waivers pursuant to G.S. 115C-238.3(d), have reported class size exceptions, and have converted State-funded teacher positions to other positions, dollars, or other expenditures.

Requested by: Senator Chalk, Representatives J. Crawford, Sizemore
-----CITIES-IN-SCHOOLS CONTRACT AUTHORIZATION

Sec. 114. Notwithstanding the provisions of G.S. 143-16.3, the Department of Public Education may contract with the Cities-in-Schools Dropout Prevention programs in North Carolina, to provide

technical assistance to local education agencies in coordinating public-private partnerships in dropout prevention programs.

Requested by: Senator Ward, Representative Diamont
 ----JOINT LEGISLATIVE EDUCATION OVERSIGHT
 COMMITTEE

Sec. 115. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12H.

"Joint Legislative Education Oversight Committee.

" § 120-70.80. Creation and membership of Joint Legislative Education Committee.

The Joint Legislative Education Committee is established. The Committee consists of 16 members as follows:

- (1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and
- (2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1991 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

" § 120-70.81. Purpose and powers of Committee.

(a) The Joint Legislative Education Oversight Committee shall examine, on a continuing basis, the several educational institutions in North Carolina, in order to make ongoing recommendations to the General Assembly on ways to improve public education from kindergarten through higher education. In this examination, the Committee shall:

- (1) Study the budgets, programs, and policies of the Department of Public Instruction, the State Board of Education, the Department of Community Colleges, the Board of Governors of The University of North Carolina, and the constituent institutions of The University of North Carolina to determine

ways in which the General Assembly may encourage the improvement of all education provided to North Carolinians and may aid in the development of more integrated methods of institutional accountability;

- (2) Examine, in particular, the Basic Education Plan and the School Improvement and Accountability Act of 1989, to determine whether changes need to be built into the plans, whether implementation schedules need to be restructured, and how to manage the ongoing development of the policies underlying these legislative plans, including a determination of whether there is a need for the legislature to develop ongoing funding patterns for these plans;
- (3) Study other states' educational initiatives in public schools, community colleges, and public universities, in order to provide an ongoing commentary to the General Assembly on these initiatives and to make recommendations for implementing similar initiatives in North Carolina; and
- (4) Study any other educational matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

" § 120-70.82. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Education Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

Requested by: Representatives J. Crawford, Tart

-----PUBLIC SCHOOL TEACHERS/LIABILITY PROTECTION

Sec. 116. Of the funds appropriated to the Department of Public Education for the 1990-91 fiscal year, an amount equal to five dollars (\$5.00) for each teacher paid from the General Fund shall be allocated by the State Board of Education to each local school administrative unit to provide comprehensive general liability protection, including coverage for errors and omissions, for teachers employed by the local school administrative unit for the 1990-91 school year.

PART XX.-----DEPARTMENT OF CORRECTION

Requested by: Senator Parnell, Representatives Huffman, Justus

-----LIMIT USE OF OPERATIONAL FUNDS

Sec. 117. Funds appropriated in Section 3 of this act to the Department of Correction for early operational costs for additional facilities shall be used for the personnel and operating expenses set forth in the budget approved by the General Assembly in this act. These funds may not be expended for any other purpose, and may not be expended for additional prison personnel positions until the new facilities are within 90 days of completion.

Requested by: Senator Parnell, Representative Barnes

-----RAISE PER DIEM REIMBURSEMENT

Sec. 118. Of the funds appropriated to the Department of Correction for the 1990-91 fiscal year, the sum of \$604,678 shall be used to raise the per diem reimbursement to counties from twelve dollars and fifty cents (\$12.50) per day to fourteen dollars and fifty cents (\$14.50) per day for State inmates serving sentences of more than 30 days in local confinement facilities.

Requested by: Senator Parnell, Representative Barnes

-----SOUTHERN APPALACHIA MAINSTREAM FUNDS

Sec. 119. Of the funds appropriated to the Department of Correction, Division of Adult Probation and Parole, for the 1990-91 fiscal year, the sum of \$190,000 shall be used as a grant-in-aid for a pilot program at Southern Appalachia Mainstream, Inc., a community-based residential program for offenders who are leaving the Division of Prisons and who are in need of residence plans, community service jobs, and/or social readiness skills. Southern Appalachia Mainstream, Inc., shall provide a quarterly report to the Joint Legislative Commission on Governmental Operations on the expenditure of State funds and the effectiveness of the program, including information on

the number of clients served and the number of clients who successfully complete the program while residing at Southern Appalachia Mainstream.

Requested by: Senator Basnight

-----GATES COUNTY SCHOOL WASTEWATER TREATMENT

Sec. 120. The wastewater treatment systems of the Gates County Junior High School and the Gates County High School may be tied into the wastewater treatment system of the Gates County Correctional Center.

Requested by: Senator Parnell

-----PRIVATE ALCOHOL AND DRUG ABUSE DETENTION CENTER

Sec. 121. The Department of Correction shall develop a proposal for a pilot program for contracting with the private sector for one or more privately operated, for-profit or not for-profit detention centers for alcohol and drug abusers with an emphasis on the self-help recovery model. The plan should provide for the private construction, operation, and maintenance of a facility or facilities not to exceed a total of 500 beds and should include considerations of size, level of custody, construction and operation costs, and the possible use of existing buildings. The Department shall submit this proposal to the Joint Legislative Commission on Governmental Operations by January 1, 1991.

Requested by: Senator Marvin, Representatives Huffman, Justus, Barnes

-----ROAD CREW PERFORMANCE AUDIT

Sec. 122. The State Auditor shall conduct a performance audit of inmate road crews performing duties contracted for by the Department of Transportation. The audit shall include an examination of work performance, hours worked, and costs. The State Auditor shall report his findings by March 1, 1991, to the Chairmen of the Senate and House Appropriations Committees, the Chairmen of the House Appropriations Subcommittees on Justice and Public Safety, the Chairmen of the Senate Appropriations Committee on Justice and Public Safety, the Chairmen of the House Appropriations Subcommittees on the Highway Fund, and the Joint Legislative Commission on Governmental Operations.

PART XXI.-----JUDICIAL DEPARTMENT

Requested by: Senator Marvin, Representatives Huffman, Justus

-----RESERVE FOR RESENTENCING HEARINGS IN CAPITAL CASES

Sec. 123. (a) There is created in the Judicial Department a nonreverting special fund to be known as "The Special Capital Case Rehearing Fund." The funds shall be used to provide resentencing hearings, related appeals, and post-conviction hearings required by the decisions of the United States Supreme Court in *McKoy v. North Carolina*, March 5, 1990, and of the Supreme Court of North Carolina upon the remand of that case, for the payment of attorneys fees and related expenses for representation of indigent persons as specified in Subchapter IX of Chapter 7A of the General Statutes. The Special Capital Case Rehearing Fund shall terminate, and all funds remaining in it shall revert to the General Fund, when the Director of the Administrative Office of the Courts certifies to the State Controller that all reasonably foreseeable resentencing hearings, related appeals, and post-conviction hearings have been substantially completed.

(b) Of the funds appropriated to the Judicial Department for the 1990-91 fiscal year the sum of \$500,000 shall be allocated to The Special Capital Case Rehearing Fund for the purposes indicated in this section.

Requested by: Senator Marvin, Representatives Huffman, Justus

-----EXTEND CERTAIN SPECIAL SUPERIOR COURT JUDGE TERMS

Sec. 124. (a) Notwithstanding G.S. 7A-45, G.S. 7A-45.1, Section 7 of Chapter 509 of the 1987 Session Laws, or any other provision of law, if any special superior court judge who is holding office on the effective date of this act first took office as an appointed or elected regular or special superior court judge in the calendar year 1986, the term of office of that judge is extended through December 31, 1994.

(b) Notwithstanding G.S. 143-23, the Judicial Department may use lapsed salary funds for fiscal year 1990-91, not to exceed the sum of \$61,260, to cover the costs of the extended term for the period of January 1, 1991, through June 30, 1991, as provided in subsection (a).

Requested by: Senator Marvin, Representatives Huffman, Justus

-----INCREASED JUDICIAL DEPARTMENT OPERATING EXPENSE REQUIREMENTS

Sec. 125. From the funds appropriated to the Judicial Department for the 1990-91 fiscal year, the Administrative Office of the Courts may use up to \$1,530,000 to meet the 1990-91 fiscal

year's additional operating expenses in the areas of office, warehouse, and print shop rental, supplies, jury and witness fees, court record book restoration, telephone system repairs, moving-related expenses, indigent person attorney fees, and postage if the postage rate is increased.

Requested by: Senator Marvin, Representatives Holt, Huffman

-----COMPREHENSIVE CHILD SUPPORT ENFORCEMENT STUDY

Sec. 126. Section 28.2(b) of Chapter 795 of the 1989 Session Laws reads as rewritten:

"(b) The Department of Human Resources and the Administrative Office of the Courts shall jointly undertake a comprehensive study of child support enforcement services in North Carolina. The report shall examine the current delivery of all child support services (IV-D and non-IV-D) by the Department of Human Resources, court offices, and county departments of social services. Such a study shall evaluate the efficiency and effectiveness of the current system and make organizational, administrative, and procedural recommendations to optimize effective delivery of service to families. The study shall examine the potential for the delivery of child support enforcement services which would provide equitable treatment of cases regardless of case type.

The study shall examine the organizational and fiscal relationship between State- and county-administered programs with the goal of eliminating or reducing duplication and fragmentation in local IV-D programs and court offices. Proposals for system-wide reform of the program shall take into consideration the use of federal IV-D revenues to support program services. The report shall include the recommendations of the respective agencies, accompanied by estimates of the costs and potential benefits of those recommendations and a plan for the implementation of these proposals. The Department of Human Resources and the Administrative Office of the Courts may contract for outside consultation and assistance with the study with funds from existing resources in their budgets. An interim report shall be submitted to the Legislative Services Office by May 15, 1990, and to the 1989 General Assembly, 1990 Regular Session. A final report shall be submitted to the Legislative Services Office by ~~January 15, 1991~~, March 15, 1991, and to the 1991 General Assembly."

Requested by: Senator Marvin, Representatives Huffman, Justus

-----CREATE DURHAM COUNTY DEFENDER DISTRICT

Sec. 127. (a) Effective July 1, 1990, a new Defender District 14, consisting of Durham County, is created and an office of public defender for Defender District 14 is established.

(b) Effective July 1, 1990, G.S. 7A-465(a) reads as rewritten:

"(a) The following counties of the State are organized into the defender districts listed below and in each of those defender districts an office of public defender is ~~established effective January 1, 1989;~~ established:

Defender District	Counties
3A	Pitt
3B	Carteret
12	Cumberland
14	Durham
15B	Orange, Chatham
16A	Scotland, Hoke
16B	Robeson
18	Guilford
26	Mecklenburg
27A	Gaston
28	Buncombe

Provided that the effective date of the establishment of the office of public defender in Defender District 16B shall be the date that a superior court judge for Superior Court District 16B, other than the judge holding the judgeship for that district established by Chapter 509, Session Laws of 1987, takes office."

(c) Effective July 1, G.S. 7A-466(c) reads as rewritten:

"(c) The terms of the public defenders for Defender Districts 3A, 3B, and 16A shall begin on January 1, 1989. The term of the public defender for defender district 16B shall begin upon the appointment of the initial public defender for that district. The term of the public defender for Defender District 14 shall begin on July 1, 1990."

(d) Notwithstanding any other provision of law to the contrary and for the initial term beginning July 1, 1990, only, the public defender shall be appointed, as soon as practical after the effective date of this act, by the Senior Resident Superior Court Judge for the set of districts, as defined in G.S. 7A-41.1, which consists of Durham County.

(e) Of the funds appropriated to the Indigent Persons' Attorney Fee Fund in the Judicial Department for fiscal year 1990-91, the Administrative Office of the Courts may use up to \$759,292 for salaries, benefits, and related expenses for the office of public

defender which is established for Defender District 14 effective July 1, 1990.

Requested by: Senator Marvin, Representatives Huffman, Nesbitt

-----RAPE VICTIM WITNESS COUNSELOR PROGRAM

Sec. 128. Section 27.2 of Chapter 795 of the 1989 Session Laws reads as rewritten:

"Sec. 27.2. From the funds specifically appropriated to the Judicial Department in the certified budget for the ~~1989-90~~ 1990-91 fiscal year, the Administrative Office of the Courts may transfer within its budget up to \$25,000 to support the existing Rape Victim Witness Counselor Program. If these funds are not used for this purpose, the Administrative Office of the Courts may use them to fund the Custody Mediation Program in Buncombe County."

PART XXII.-----DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Requested by: Senators Parnell, Marvin, Representative Huffman

-----CONTINUE SUMMIT HOUSE FUNDING

Sec. 129. Section 113 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 113. Of the funds appropriated to the Department of Crime Control and Public Safety for the ~~1989-90~~ 1990-91 fiscal year, ~~\$75,000~~ \$165,000 shall be used to support a pilot program at Summit House, a community-based residential alternative to incarceration for mothers and pregnant women convicted of nonviolent crimes. Summit House shall provide a quarterly report to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have their probation revoked, and the number of clients who successfully complete the program while housed at Summit House."

Requested by: Senators Parnell, Marvin, Representative Barnes

-----NO REORGANIZATION OF COMMUNITY PENALTIES PROGRAMS

Sec. 130. The Department of Crime Control and Public Safety may not restructure or reorganize the community penalties programs.

Requested by: Senator Marvin, Representative Huffman

-----ELIGIBILITY FOR VICTIMS COMPENSATION FUNDS

Sec. 131. G.S. 15B-11(a), as amended by Chapter 898 of the 1990 Session Laws, reads as rewritten:

"(a) An award of compensation will be denied if:

- (1) The claimant fails to file his application for an award within one year after the date of the criminally injurious conduct that caused the injury or death for which he seeks the award;
- (2) The economic loss is incurred after one year from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award, except in the case where the victim for whom compensation is sought was 10 years old or younger at the time the injury occurred. In that case an award of compensation will be denied if the economic loss is incurred after two years from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award;
- (3) The criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and there was no good cause for the delay;
- (4) The award would benefit the ~~offender, his accomplice, a spouse of or a person living in the same household with the offender or his accomplice, or a parent, child, brother, or sister of the offender or his accomplice,~~ offender or his accomplice, unless a determination is made that the interests of justice require that an award be approved in a particular case; or
- (5) The criminally injurious conduct occurred while the victim was confined in any State, county, or city prison, correctional, youth services, or juvenile facility, or local confinement facility, or half-way house, group home, or similar facility."

Requested by: Senator Marvin, Representative Huffman

-----COMMUNITY PENALTIES PROGRAMS

Sec. 132. (a) Notwithstanding any other provision of this act or any other provision of law, funds in the amount of \$1,439,350 appropriated to the Department of Crime Control and Public Safety are allocated to the programs in the amounts set out in this section. These allocations are in lieu of the allocations made in Chapter 8 of the 1989 Session Laws and Chapter 500 of the 1989 Session Laws:

- (1) \$1,201,700 to be allocated as listed below among the existing community penalties programs. Contracts for the programs listed below shall be executed by the Department of Crime Control and Public Safety no later than one week after *sine die* adjournment of the 1989 Regular Session of the General Assembly.

One Step Further, Inc.	\$130,090
Rockingham/Caswell (Rural Services Contract)	40,900
Fayetteville Area Sentencing Center, Inc.	126,845
Re-Entry, Inc.	93,500
Repay, Inc.	96,225
Community Corrections Resources, Inc.	96,225
Western Carolinians for Criminal Justice, Inc.	96,335
Prison & Jail Project, Inc.	96,335
Community Penalties Program, Inc.	65,610
Jacksonville Community Penalties, Inc.	77,290
Gaston Community Penalties, Inc.	51,615
Dispute Settlement Center, Inc.	51,615
Appropriate Punishment Option, Inc.	51,615
Mecklenburg Community Corrections	93,500
Neuse River Community Penalties Program	34,000

(2) \$117,700 to cover administrative costs.

(b) The remaining funds in the amount of \$119,150 appropriated to the Department of Crime Control and Public Safety for the

community penalties programs for the 1990-91 fiscal year shall be held in a reserve until December 1, 1990, to allow the completion of an operational audit of the community penalties programs by the State Auditor. The funds shall be released from the reserve on December 1, 1990. The State Auditor shall conduct an operational audit of the community penalties programs that shall include an evaluation of the administration of the funding by the Department of Crime Control and Public Safety for community penalties programs and the Department's management of those programs, an evaluation of each local community penalties program, and an evaluation of the use made by each judicial district of the community penalties program. The State Auditor shall complete the operational audit and report his findings and recommendations to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Committees on Justice and Public Safety, and the Fiscal Research Division by December 1, 1990.

(c) When the funds are expended from the reserve, the funds shall be allocated as follows; provided however, that any program found by the State Auditor not to be in substantial compliance with the program responsibilities as stated in Part 6 of Article 11 of Chapter 143B of the General Statutes may not receive additional funds:

- (1) \$50,878 to continue expansion for 11 community penalties programs as follows:

One Step Further, Inc.	\$ 9,574
Fayetteville Area Sentencing Center, Inc.	5,033
Repay, Inc.	3,820
Community Corrections Resources, Inc.	3,820
Western Carolinians for Criminal Justice, Inc.	3,965
Prison & Jail Project, Inc.	3,965
Community Penalties Program, Inc.	2,603
Jacksonville Community Penalties, Inc.	11,960

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|--|--------|
| Gaston Community Penalties,
Inc. | 2,046 |
| Dispute Settlement Center,
Inc. | 2,046 |
| Appropriate Punishment
Option, Inc. | 2,046; |
- (2) \$11,668 to establish a new community penalties program to be located in the 16thB Superior Court Division to begin March 1, 1991;
 - (3) \$14,585 to establish a new community penalties program to be located in the Third Superior Court Division to begin February 1, 1991;
 - (4) \$14,585 to establish a new community penalties program to be located in Nash County to begin February 1, 1991;
 - (5) \$15,000 to provide contractual services to Sampson, Duplin, and Jones Counties through Jacksonville Community Penalties, Inc., to begin March 1, 1991;
 - (6) \$8,900 to provide contractual services to Cleveland and Lincoln Counties through Gaston Community Penalties, Inc., to begin March 1, 1991;
 - (7) \$4,334 may be used to expand further existing programs found to be in compliance with Part 6 of Article 11 of Chapter 143B of the General Statutes and new programs authorized by this act.

Requested by: Senator Basnight

-----HIGHWAY PATROL POSITIONS FILLED ONLY IN FISCAL YEAR IN WHICH THEY OCCUR

Sec. 133. G.S. 20-185 is amended by adding a new subsection to read:

"(i) Positions in the Highway Patrol Division approved by the General Assembly in the first fiscal year of a biennium to be added in the second fiscal year of a biennium may not be filled before adjustments to the budget for the second fiscal year of the budget are enacted by the General Assembly. If a position to be added in the Highway Patrol Division for the second fiscal year of the biennium requires training, no applicant may be trained to fill the position until the budget adjustments for the second fiscal year are enacted by the General Assembly."

Requested by: Senator Marvin. Representative Huffman

-----LAW ENFORCEMENT DRIVING TRACK FUNDS

Sec. 134. Section 27 of Chapter 754 of the 1989 Session Laws reads as rewritten:

"Sec. 27. Of the unexpended funds appropriated for the 1987-88 fiscal year to the Department of Crime Control and Public Safety in Section 5 of Chapter 795 of the 1987 Session Laws for the law enforcement precision driving track, \$239,400 shall be used for the construction of a control tower, support building that houses a control tower, classroom facilities, and maintenance bays to be located at the driving track."

PART XXIII.-----DEPARTMENT OF JUSTICE

Requested by: Senator Marvin, Representatives Huffman, Justus

-----STATE BUREAU OF INVESTIGATION SALARY ADJUSTMENT

Sec. 135. Sec. 24 of Chapter 799 of the 1989 Session Laws reads as rewritten:

"Sec. 24. The State Bureau of Investigation may continue in fiscal year 1989-90-1990-91 to pay overtime compensation for 25 supervisory personnel positions as is being done on June 30, 1989, 1990, up to a maximum of five thousand two hundred dollars (\$5,200) annually per individual. The Office of State Personnel has reported its findings and recommendations regarding the issue of overtime compensation for State Bureau of Investigation supervisory personnel to the Senate and House Appropriations Committees on Justice and Public Safety and the Fiscal Research Division. The State Bureau of Investigation shall review and respond to those recommendations and shall provide its written response to the Office of State Personnel, the Senate and House Appropriations Committees on Justice and Public Safety and the Fiscal Research Division by October 31, 1990. The Office of State Personnel shall continue to study the issue of overtime compensation for State Bureau of Investigation supervisory personnel and shall make its final recommendations to the Senate and House Appropriations Committee on Justice and Public Safety and the Fiscal Research Division by April 15, 1990 December 15, 1990 as to whether such compensation should continue."

Requested by: Senators Marvin, Parnell, Representatives Justus, Huffman

-----MOBIL PLAN RESPONSE PROJECT

Sec. 136. Of the funds appropriated to the Department of Justice, the sum of \$155,259 for the 1990-91 fiscal year may be used to provide continued support for the staff in the Environmental

Protection Section to provide legal services for the Mobil Plan Response Project.

Requested by: Senator Marvin, Representatives Anderson, Huffman
-----USE LAPSED SALARIES FOR SBI CONTRACTUAL POSITIONS

Sec. 137. Notwithstanding G.S. 143-23(a1), the Department of Justice may use lapsed salary funds for the 1990-91 fiscal year to fund three contractual positions in the State Bureau of Investigation. Those three positions are a forensic analysis lab position and two business communication specialist positions. The Department of Justice is directed to request these positions as permanent positions for the 1991-92 fiscal year if the positions continue to be needed.

PART XXIV.-----DEPARTMENT OF TRANSPORTATION

Requested by: Senator Basnight
-----FILL CERTAIN HIGHWAY FUND COMPUTER POSITIONS

Sec. 138. Positions authorized by the General Assembly in Chapter 752 of the 1989 Session Laws, funded by the Highway Fund, for the transportation computing center to reorganize and expand the information processing services, shall be filled during the 1990-91 fiscal year.

Requested by: Senator Martin of Pitt, Representative Diamont
-----MAINTENANCE OF STATE HIGHWAY BRIDGES

Sec. 139. G.S. 136-97(b) reads as rewritten:

"(b) The Department of Transportation, as part of maintaining the highways, bridges, and watercourses of this State, shall haul all debris removed from on, under, or around a bridge to an appropriate disposal site for solid waste, where the debris shall be disposed of in accordance with law. This requirement may be waived when bridge closure has an adverse impact on public safety or creates a significant hardship to the traveling public by restricting all access or necessitating a significant detour. In these instances, the minimum amount of debris which must be removed to restore service may be passed downstream."

Requested by: Senator Martin of Pitt, Representatives McLaughlin, Woodard

-----CASH FLOW HIGHWAY FUND APPROPRIATIONS

Sec. 140. Section 48 of Chapter 500 of the 1989 Session Laws reads as rewritten:

"Sec. 48. The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 1991-92	\$ 981,100,000	\$954,000,000
For Fiscal Year 1992-93	\$1,005,000,000	<u>\$973,080,000."</u>

Requested by: Senator Martin of Pitt, Representatives McLaughlin, Woodard

-----CASH FLOW HIGHWAY TRUST FUND APPROPRIATION

Sec. 141. Section 22 of Chapter 799 of the 1989 Session Laws reads as rewritten:

"Sec. 22. The General Assembly authorizes and certifies anticipated revenues of the North Carolina Highway Trust Fund as follows:

For fiscal year 1991-92	\$734,800,000	\$539,700,000
For fiscal year 1992-93	\$756,700,000	<u>\$555,900,000."</u>

Requested by: Senator Martin of Pitt, Representative McLaughlin

-----SPECIAL APPROPRIATIONS FOR HIGHWAYS REPEALED

Sec. 142. Section 98 of Chapter 753 of the 1989 Session Laws is repealed.

Requested by: Senator Hunt, Representative Michaux

-----CONFORM DOT MINORITY PARTICIPATION TO FEDERAL REGULATIONS

Sec. 143. (a) G.S. 136-28.4 reads as rewritten:

"§ 136-28.4. State policy concerning participation by ~~minority contractors~~, disadvantaged businesses in highway contracts.

(a) It is the policy of this State to encourage and promote ~~the use of minority contractors in the construction, alteration and maintenance of State roads, streets, highways, and bridges~~ participation by disadvantaged businesses in contracts let by the Department pursuant to this Chapter for the design, construction, alteration, or maintenance of State highways, roads, streets, or bridges and in the procurement of materials for such these projects. All State agencies, institutions ~~institutions~~, and political subdivisions shall cooperate with the Department of Transportation and all other State agencies, ~~institutions~~ institutions, and political subdivisions in efforts to encourage and promote the use of ~~minority contractors~~ disadvantaged businesses in such State construction, alteration, maintenance and procurement, these contracts.

(b) A ten percent (10%) goal is established for participation by minority businesses ~~in road or bridge construction, alteration, or maintenance projects~~ and a five percent (5%) goal for participation by women businesses is established in contracts let by the Department of

Transportation for the design, construction, alteration, or maintenance of State highways, roads, streets, or bridges and for the procurement of materials for these projects, is established. The Department of Transportation shall endeavor to award to minority businesses at least ten percent (10%), by value, of the contracts it lets for ~~the construction, alteration, or maintenance of roads and bridges, these purposes,~~ and shall endeavor to award to women businesses at least five percent (5%), by value, of the contracts it lets for these purposes. The Department shall adopt written procedures specifying the steps it will take to achieve ~~this goal, provided that the~~ these goals. The Department shall give equal opportunity for contracts it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

(c) ~~As used in this section, the term 'minority'~~ The following definitions apply in this section:

(1) 'Disadvantaged business' has the same meaning as in 49 C.F.R. § 23.62.

(2) 'Minority' has the same meaning as in 49 C.F.R. § 23.5."

(b) The Department of Transportation shall compile and keep current a list of all disadvantaged, minority, and women businesses in the State that could participate in contracts let by the Department, and shall adopt a plan for actively seeking participation by disadvantaged, minority, and women businesses pursuant to the State policy set forth in G.S. 136-28.4. The Department shall report to the Joint Legislative Highway Oversight Committee on the details of this plan and keep the Committee informed of its progress in meeting the goals established in G.S. 136-28.4.

Requested by: Senator Martin of Pitt, Representative Diamont

-----DRIVER TRAINING PROGRAM FUNDING FROM
HIGHWAY FUND WITH REIMBURSEMENT TO HIGHWAY
FUND FROM HIGHWAY TRUST FUND

Sec. 144. (a) Notwithstanding G.S. 20-88.1, all expenses incurred by the State in carrying out the Driver's Training and Education Program up to seventeen million dollars (\$17,000,000) for the 1990-91 fiscal year shall be paid out of the Highway Fund. The Department of Transportation shall transfer from the Highway Fund to the State Treasurer the sum of \$17,000,000 to be deposited as nontax revenue to partially offset the cost of the Driver Education Program. The State Board of Education may use funds appropriated to the Department of Public Education for aid to local school administrative units if additional funds are required to operate this program.

(b) Section 4.3 of Chapter 692 of the 1989 Session Laws is repealed.

(c) Notwithstanding G.S. 105-187.9, in fiscal year 1990-91, the State Treasurer shall transfer the sum of three hundred fifty-six million dollars (\$356,000,000) of highway use tax revenue deposited in the Highway Trust Fund under G.S. 105-187.9, including revenue designated as highway use tax revenue by an act of the General Assembly, from the Highway Trust Fund to other Funds in accordance with this subsection. The Treasurer shall transfer the first two hundred sixty-four million dollars (\$264,000,000) of highway use tax revenue from the Highway Trust Fund to the General Fund. The Treasurer shall transfer the next seventeen million dollars (\$17,000,000) of highway use tax revenue from the Highway Trust Fund to the Highway Fund to reimburse it for funding driver education under G.S. 20-88.1. The Treasurer shall transfer the next seventy-five million dollars (\$75,000,000) of highway use tax revenue from the Highway Trust Fund to the General Fund. The transfers made by this subsection are in lieu of the transfer otherwise required by G.S. 105-187.9.

Requested by: Senator Goldston, Representative McLaughlin

-----LRC STUDY ON DRIVERS' EDUCATION

Sec. 145. The Legislative Research Commission may study the cost, funding, and use of personnel in providing a Drivers' Education Program to the State's public school students with a view to promoting the program's efficiency, modifying its funding as appropriate, and, if possible, reducing its cost. The Commission may report the findings and recommendations of its study to the 1991 General Assembly.

PART XXV.-----MISCELLANEOUS PROVISIONS

Requested by: Senator Royall

-----AUTISM SOCIETY FUNDS

Sec. 146. Of the funds appropriated from the General Fund for the 1990-91 fiscal year, \$345,960 shall be allocated to the Autism Society of North Carolina, Inc., to continue the State grant for operations and for stipends for the autistic children's and adults' summer camp.

Requested by: Senator Royall, Representative Diamont

-----EXECUTIVE BUDGET ACT APPLIES

Sec. 147. The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

Requested by: Senator Royall, Representative Diamont

-----COMMITTEE REPORT

Sec. 148. The Conferee Report on Proposed Conference Committee Substitute for Senate Bill 1426, dated July 26, 1990, which was distributed in the Senate and the House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for such purposes shall be considered a part of this act.

Requested by: Senator Royall, Representative Diamont

-----MOST TEXT APPLIES ONLY TO 1990-91

Sec. 149. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1990-91 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1990-91 fiscal year.

Requested by: Senator Royall, Representative Diamont

-----1989-90 APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

Sec. 150. Except where expressly repealed or amended by this act, the provisions of Chapters 500, 752, 754, 795, and 799 of the 1989 Session Laws as amended remain in effect.

Sec. 151. Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 1990-91 fiscal year in Chapters 500, 752, 754, 795, and 799 of the 1989 Session Laws that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations and budget reductions of this act for those same particular purposes.

Requested by: Senator Royall, Representative Diamont

-----EFFECT OF HEADINGS

Sec. 152. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Senator Royall, Representative Diamont

-----SEVERABILITY CLAUSE

Sec. 153. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Senator Royall, Representative Diamont

-----EFFECTIVE DATE

Sec. 154. Except as otherwise provided, this act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 1269

CHAPTER 1067

AN ACT TO PROVIDE THAT COURT ORDERS AND WRITTEN AGREEMENTS REGARDING MEDICAL SUPPORT FOR MINOR CHILDREN ARE VALID AUTHORIZATION TO INSURERS TO RELEASE INFORMATION AND PROCESS CLAIMS AND TO PROVIDE FOR REVIEW OF THE PRESUMPTIVE CHILD SUPPORT GUIDELINES.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 50 of the General Statutes is amended by adding a new section to read:

"§ 50-13.11. Orders and agreements regarding medical support for minor children.

(a) The court may order a parent of a minor child or other responsible party to provide medical support for the child, or the parties may enter into a written agreement regarding medical support for the child. An order or agreement for medical support may require one or both parties to maintain health insurance, dental insurance, or both, or to pay the medical, hospital, or dental expenses.

(b) The party ordered or under agreement to provide medical insurance shall provide written notice of any change in the applicable insurance coverage to the other party.

(c) The employer or insurer of the party required to provide medical insurance shall release to the other party, upon written request, any information on a minor child's insurance coverage that the employer or insurer may release to the party required to provide medical insurance.

(d) When a court order or agreement for medical insurance is in effect, the signature of either party shall be valid authorization to the insurer to process an insurance claim on behalf of a minor child.

(e) If the party who is required to provide medical insurance fails to maintain the insurance coverage for the minor child, the party shall be liable for any medical, hospital, or dental expenses incurred from the date of the court order or agreement that would have been covered by insurance if it had been in force."

Sec. 2. G.S. 50-13.4 (c) reads as rewritten:

"(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (cl). ~~Upon request of a party, the court may modify the amount resulting from application of the guidelines if, after considering evidence regarding one or more of the criteria established pursuant to subsection (cl), the court finds by the greater weight of the evidence that application of the guidelines would not meet the reasonable needs of the child as set forth in this subsection. However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered. In all cases when requested by a party the court shall hear evidence and from the evidence find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to pay support.~~

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

- (1) If the child is otherwise emancipated, payments shall terminate at that time;
- (2) If the child is still in primary or secondary school when he reaches age 18, the court in its discretion may order support payments to continue until he graduates, otherwise ceases to attend school on a regular basis, or reaches age 20, whichever comes first."

Sec. 3. Prior to August 1, 1991, the Conference of Chief District Judges shall review and make applicable revisions to the presumptive child support guidelines that became effective July 1, 1990. The purpose of the review shall be to ensure that payments ordered for the support of a minor child are in such amount as to meet the reasonable needs of the child for health, education, and

maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.

The Conference shall give the Department of Human Resources, the Administrative Office of the Courts, and the general public an opportunity to comment on the new guidelines and any proposed changes. The Conference shall hold at least one public hearing with notice to be provided at least 30 days before the public hearing. The Conference shall consider fully all written and oral submissions regarding the new guidelines and any proposed changes. Upon promulgation, the new guidelines shall include commentary regarding the origin and basis for the guidelines.

The Administrative Office of the Courts and the Department of Human Resources shall compile information and gather statistics from a representative sample of counties on the new child support guidelines and report to the General Assembly. The report shall be filed with the General Assembly on or before February 1, 1991, and annually thereafter. The report shall include information regarding the parties' income, amount of child support awards, treatment of adjustments in the numerical calculations, and any other issues and problems associated with the new guidelines.

Sec. 4. Sections 1 and 2 of this act shall become effective October 1, 1990, and shall apply to court orders and written agreements entered on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 2207

CHAPTER 1068

AN ACT TO REMOVE THE OBSOLETE SALES TAX EXEMPTION FOR ICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13(6) is repealed.

Sec. 2. G.S. 105-164.13(4b) reads as rewritten:

"(4b) Products of a farm sold in their original state by the producer of the products if the producer is not primarily a retail ~~merchant~~, merchant and ice used to preserve agriculture, aquaculture and commercial fishery products until the products are sold at retail."

Sec. 3. This act shall become effective September 1, 1990.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

AN ACT TO INCREASE VARIOUS FEES AND CREATE NEW FEES CHARGED BY THE DEPARTMENT OF INSURANCE; TO AMEND THE RETALIATORY PREMIUM TAX LAW; TO CREATE, MAINTAIN, AND APPROPRIATE MONEY TO THE DEPARTMENT OF INSURANCE CONSUMER PROTECTION FUND; AND TO IMPROVE THE FINANCIAL STABILITY OF THE STATE PROPERTY FIRE INSURANCE FUND.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is to raise revenue for the State in order for the State and the Department of Insurance to accomplish the following:

(a) Generate a net revenue to the General Fund in an amount of approximately one million dollars for the ensuing fiscal years.

(b) Mitigate the adverse monetary effect on the State Property Fire Insurance Fund caused by the transfer of substantial amounts from that Fund to reimburse local governments for fire protection of State property.

(c) Eliminate the State's potential liability arising out of the case of *The Aetna Casualty and Surety Company, et al. v. James E. Long*, Commissioner of Insurance of the State of North Carolina, 90CV 04729, filed on April 26, 1990; provide for a premium tax credit over the next four fiscal years for the plaintiffs and other foreign insurance companies similarly situated; and cover the resulting loss of retaliatory premium tax revenue.

(d) Create a special fund in the office of the State Treasurer for the use of the Department of Insurance (1) for retaining experts and court reporters in handling insurance ratemaking for the benefit of insurance consumers in this State; (2) for locating and recovering missing assets of and other amounts owed to insolvent insurers for the benefit of the policy owners of such insurers; and (3) for retaining legal counsel and court reporters in extraordinary civil actions commenced against the Commissioner of Insurance or his deputies that arise out of the performance of their official duties.

Sec. 2. G.S. 58-6-5 reads as rewritten:

" § 58-6-5. *Schedule of fees and charges.*

The Commissioner of Insurance shall collect and pay into the State treasury fees and charges as follows:

- (1) For filing and examining ~~statement preliminary to an insurance company application for admission, twenty dollars (\$20.00)~~ a nonrefundable fee of two hundred fifty dollars (\$250.00), to be submitted with such filing; for filing and

auditing annual statement, ~~ten dollars (\$10.00)~~ one hundred dollars (\$100.00); for filing any other papers required by law, ~~one dollar (\$1.00)~~ twenty-five dollars (\$25.00); for each certificate of examination, condition, or qualification of company or association, ~~two dollars (\$2.00)~~ fifteen dollars (\$15.00); for each seal when required, ~~two dollars (\$2.00)~~ ten dollars (\$10.00); ~~for filing charter and other papers of a fraternal order, preliminary to admission, twenty-five dollars (\$25.00)~~ ; for a list of licensed insurance companies, ten dollars (\$10.00).

- (2) Repealed by Session Laws 1977, c. 376, s. 2.
- (3) The Commissioner shall receive for copy of any record or paper in his office fifty cents (50¢) per copy sheet and ~~one dollar (\$1.00)~~ ten dollars (\$10.00) for certifying same, or any fact or data from the records of his office; for examination of any foreign company, not less than forty dollars (\$40.00) per diem and all expenses or the fees as prescribed by the Examination Committee of the National Association of Insurance Commissioners, and for examining any domestic company, actual expenses incurred; for the examination and approval of charters of companies, ~~five dollars (\$5.00)~~ twenty-five dollars (\$25.00). Notwithstanding the provisions of G.S. 138-6, the Commissioner of Insurance is authorized to pay examiners an amount in lieu of traveling expenses equal to the rate charged to and collected from the companies, associations or orders. For the investigation of tax returns and the collection of any delinquent taxes disclosed by such investigation, the Commissioner may, in lieu of the above per diem charge, assess against any such delinquent company the expense of the investigation and collection of such delinquent tax, a reasonable percentage of such delinquency, not to exceed ten per centum (10%) of such delinquency, and in addition thereto.
- (4) He shall collect all other fees and charges due and payable into the State treasury by any company, association, order, or individual under his Department.
- (5) The Commissioner shall charge and insurers shall pay, as a prerequisite to receipt and review by the Commissioner of filings of policy forms or rates, a fee of twenty dollars (\$20.00) per policy form filed and submitted for approval; a fee of twenty dollars (\$20.00) for each property or casualty rate filing submitted; and a fee of twenty dollars (\$20.00) for each life, accident, or health rate filing submitted. Payment

of the fee shall be made at the time the form or rate filing is submitted. All fees are nonrefundable. If an insurer fails to pay the proper fee at the time of submittal, the Commissioner shall not be required to review the form or rate filed until the insurer remits the proper fee; and any statutory time periods relating to the filing shall be tolled until the insurer remits the proper fee. As used in this subdivision, 'insurer' includes an entity subject to Articles 65 through 67 of this Chapter; any rating organization, advisory organization, joint underwriting association, or joint reinsurance organization subject to Articles 1 through 64 of this Chapter; and the North Carolina Rate Bureau and the North Carolina Motor Vehicle Reinsurance Facility. As used in this subdivision, 'policy form' includes an application form, a declarations page, a policy jacket, a policy or contract of insurance, or an endorsement, rider, or any amendment to a policy form that has already been approved by the Commissioner; provided that an initial policy filing made by an insurer shall constitute one policy form."

Sec. 3. G.S. 58-6-15 reads as rewritten:

" § 58-6-15. *Licenses run from July 1; pro rata payment.*

The license required of insurance companies shall continue for the next ensuing 12 months after July 1 of each year, unless revoked as provided in Articles 1 through 64 of this Chapter; ~~but the Commissioner of Insurance may, when the annual license tax exceeds twenty-five dollars (\$25.00), receive from applicants after July 1 so much of the license fee required by law as may be due pro rata for the remainder of the year, beginning with the first day of the current month.~~ Application for renewal of the company license must be submitted on or before the first day of March on a form to be supplied by the Commissioner of Insurance. Upon satisfying himself that the company has met all requirements of law and appears to be financially solvent he shall forward the renewal license to the company. Any company which does not qualify for a renewal license before July 1 shall cease to do business in the State of North Carolina as of July 1, unless its license is sooner revoked by the Commissioner.

~~Before issuing any license for the year, beginning July 1, 1955, the Commissioner shall collect, in addition to the annual license fee, a pro rata fee for the three months of April, May and June, 1955, collection of which fee shall extend licenses expiring April 1, 1955, until July 1, 1955, if accepted by the Commissioner of Insurance.~~

Nothing contained in this section shall be interpreted as applying to licenses issued to individual representatives of insurance companies."

Sec. 4. G.S. 105-228.4(a) reads as rewritten:

" § 105-228.4. *Annual registration fees for insurance companies.*

(a) Each ~~and every~~ insurance company shall, as a condition precedent for doing business in this State, on or before the first day of March of each year apply for and obtain from the Commissioner of Insurance a certificate of registration, or license, effective the first day of July, and shall pay for such certificate the following annual fees except as hereinafter provided in subsections (b) and (c):

For each domestic farmer's mutual assessment fire insurance company or association, and each branch thereof	\$10.00 <u>\$25.00</u>
For each fraternal order	25.00 <u>100.00</u>
For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1	300.00 <u>500.00</u>

The fees levied above shall be in addition to those specified in G.S. 58-6-5."

Sec. 5. G.S. 58-65-55 reads as rewritten:

" § 58-65-55. *Issuance of certificate.*

Before issuing any such license or certificate the Commissioner of Insurance may make such an examination or investigation as he deems expedient. The Commissioner of Insurance shall issue a certificate of authority or license upon the payment of an annual fee of ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00) and upon being satisfied on the following points:

- (1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.
- (2) The rates charged and benefits to be provided are fair and reasonable.
- (3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department of Insurance deems adequate, as provided hereinafter.
- (4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate."

Sec. 6. G.S. 58-67-160 reads as rewritten:

" § 58-67-160. *Fees.*

Every health maintenance organization subject to this Article shall pay to the Commissioner the following fees:

- (1) For filing an application for a certificate of authority, two hundred fifty dollars (\$250.00); or amendment thereto for each renewal thereof, twenty dollars (\$20.00) five hundred dollars (\$500.00);
- (2) For filing each annual report, ~~ten dollars (\$10.00)~~ one hundred dollars (\$100.00)."

Sec. 7. G.S. 58-35-5(e) reads as rewritten:

"(e) There shall be two types of licenses issued to an insurance premium finance company:

- (1) An 'A' type license shall be issued to insurance premium finance companies whose business of insurance premium financing is limited to the financing of insurance premiums of one insurance agent or agency and whose primary function is to finance only the insurance premium of such agent or agency. The license fee for an 'A' type license shall be ~~two hundred dollars (\$200.00)~~ three hundred dollars (\$300.00) for each license year or part thereof.
- (2) A 'B' type license shall be issued to an insurance premium finance company whose business of insurance premium financing is not limited to the financing of insurance premiums of one insurance agent or agency and whose primary function is to finance the insurance premiums of more than one insurance agent or agency. The license fee for a 'B' type license shall be ~~nine hundred fifty dollars (\$950.00)~~ one thousand two hundred dollars (\$1,200) for each license year or part thereof.

A branch office license may be issued for either an 'A' type or 'B' type license. The fee for the branch office license shall be fifty dollars (\$50.00) for each license year or part thereof. The examination fee when required by this section shall be ~~one hundred dollars (\$100.00)~~ two hundred fifty dollars (\$250.00) per application."

Sec. 8. G.S. 58-9-5 is amended by adding a new subdivision to read:

"(5) Application fee. -- The copies of the plan of exchange filed in accordance with subdivision (2) of this section shall be accompanied by a nonrefundable fee of two hundred fifty dollars (\$250.00)."

Sec. 9. Article 7 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-7-155. *Application fee.*

Every application for redomestication under G.S. 58-7-60 and G.S. 58-7-65 shall be accompanied by a nonrefundable fee of two hundred dollars (\$200.00)."

Sec. 10. G.S. 58-7-150 is amended by adding a new subsection to read:

"(c) An application for merger or consolidation under this section shall be accompanied by a nonrefundable fee of two hundred fifty dollars (\$250.00)."

Sec. 11. Article 18 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-18-25. Application fee.

An application for a certificate of authority under this Article shall be accompanied by a nonrefundable fee of fifty dollars (\$50.00)."

Sec. 12. Article 22 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-22-70. Registration and renewal fees.

Every risk retention group and purchasing group that registers with the Commissioner under this Article shall pay the following fees:

<u>Risk retention group registration</u>	<u>\$250.00</u>
<u>Purchasing group registration</u>	<u>50.00</u>
<u>Risk retention group renewal</u>	<u>500.00</u>
<u>Purchasing group renewal</u>	<u>50.00</u>

Registration fees are nonrefundable, shall not be prorated, and must be submitted with the application for registration. Renewal fees are nonrefundable, shall not be prorated, and shall be paid on or before January 1 of each year."

Sec. 13. G.S. 58-21-20 is amended by adding a new subsection to read:

"(c) Every surplus lines insurer that applies for eligibility under this section shall pay a nonrefundable fee of two hundred fifty dollars (\$250.00). In order to renew eligibility, such insurer shall pay a nonrefundable renewal fee of five hundred dollars (\$500.00) on or before January 1 of each year thereafter. Such fees shall not be prorated."

Sec. 14. G.S. 58-33-125 reads as rewritten:

"§ 58-33-125. Fees.

(a) The following table indicates the annual fees that are required for the respective licenses and appointments issued, renewed, or cancelled under this Article and Article 21 of this Chapter:

<u>Adjuster</u>	<u>\$50.00—\$75.00</u>
<u>Adjuster, crop hail only</u>	<u>10.00—20.00</u>
<u>Agent appointment cancellation</u>	
<u>(paid by insurer)</u>	<u>5.00—10.00</u>
<u>Agent appointment, individual</u>	<u>10.00—20.00</u>
<u>Agent appointment, nonindividual</u>	<u>25.00—50.00</u>
<u>Agent, overseas military</u>	<u>10.00—20.00</u>
<u>Broker, nonresident</u>	<u>50.00—100.00</u>

Broker, resident	25.00 — 50.00
Limited representative	10.00 — 20.00
Limited representative cancellation (paid by insurer)	5.00—10.00
Motor vehicle damage appraiser	50.00 — 75.00
<u>Recertification, continuing education</u>	5.00
Surplus lines licensee, corporate	50.00
Surplus lines licensee, individual	50.00

These fees are in lieu of any other license fees. Fees paid by an insurer on behalf of a person who is licensed or appointed to represent the insurer shall be paid to the Commissioner on a quarterly or monthly basis, in the discretion of the Commissioner. The recertification fee in this subsection shall be paid by persons subject to G.S. 58-33-130 at the time they renew their licenses or appointments under G.S. 58-33-130(c).

(b) Whenever a temporary license may be issued pursuant to this Article, the fee shall be at the same rate as provided in subsection (a) of this section; and any amounts so paid for a temporary license may be credited against the fee required for an appointment by the sponsoring company.

(c) Any person not registered who is required by law or administrative rule to secure a license shall, upon application for registration, pay to the Commissioner a fee of ~~ten dollars (\$10.00)~~ thirty dollars (\$30.00). In the event additional licensing for other kinds of insurance is requested, a fee of ~~ten dollars (\$10.00)~~ twenty dollars (\$20.00) shall be paid to the Commissioner upon application for registration for each additional kind of insurance.

(d) The requirement for an examination or a registration fee does not apply to agents for domestic farmers' mutual assessment fire insurance companies or associations specified in G.S. 105-228.4.

(e) In the event a license issued under this Article is lost, stolen, or destroyed, the Commissioner may issue a duplicate license upon a written request from the licensee and payment of a fee of ~~one dollar (\$1.00)~~ five dollars (\$5.00).

(f) Whenever a printed record of an agent's file is requested, the fee shall be ten dollars (\$10.00) for each copy whether or not the agent is currently licensed, previously licensed, or no record of that agent exists.

(g) All fees prescribed by this section are nonrefundable."

Sec. 15. Article 30 of Chapter 58 of the General Statutes is amended by adding a new section to read:

" § 58-30-310. Exemption from filing fees.

As used in this section, 'Commissioner' includes the Commissioner's deputies, employees, or attorneys of record. The

Commissioner is not required to pay any fee to any public officer in this State for filing, recording, issuing a transcript or certificate, or authenticating any paper or instrument pertaining to the exercise by the Commissioner of any of the powers or duties conferred upon him under this Article. This section applies whether or not the paper or instrument is connected with the commencement of an action or proceeding by or against the Commissioner or with the subsequent conduct of an action or proceeding."

Sec. 16. G.S. 58-36-35 reads as rewritten:

"§ 58-36-35. Appeal to Commissioner from decision of Bureau.

Any member of the Bureau may appeal to the Commissioner from any decision of the Bureau. After a hearing held on not less than 10 days' written notice to the appellant and to the Bureau, the Commissioner shall issue an order approving the decision or directing the Bureau to reconsider the decision. In the event the Commissioner directs the Bureau to reconsider the decision and the Bureau fails to take action satisfactory to the Commissioner, the Commissioner shall make such order as he may see fit.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or his designated hearing officer and shall serve on the appellee a written statement of his case and any evidence he intends to offer at the hearing. No later than five days before such hearing, the appellee shall file with the Commissioner or his designated hearing officer and shall serve on the appellant a written statement of his case and any evidence he intends to offer at the hearing. Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party. Each party shall, on a date determined by the Commissioner or his designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or his designated hearing officer and serve on the other party, a proposed order. The Commissioner or his designated hearing officer shall then issue an order."

Sec. 17. G.S. 58-37-65(c) reads as rewritten:

"(c) The Commissioner shall, after a hearing held on not less than 30 days written notice to the appellant and to the Board, (i) issue an order approving the decision of the Board or (ii) after setting out the findings and conclusions as to how the action of the Board is not in accordance with the Plan of Operation, the Standard Practice Manual, or other provisions of this Article, direct the Board to reconsider its decision. In the event the Commissioner directs the Board to reconsider its decision and the Board fails to take action in accordance

with the Plan of Operation, the Standard Practice Manual, or other provisions of this Article, the Commissioner may issue an order modifying the action of the Board to the extent necessary to comply with the Plan of Operation, the Standard Practice Manual, or other provisions of this Article.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or his designated hearing officer and shall serve on the appellee a written statement of his case and any evidence he intends to offer at the hearing. No later than five days before such hearing, the appellee shall file with the Commissioner or his designated hearing officer and shall serve on the appellant a written statement of his case and any evidence he intends to offer at the hearing. Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party. Each party shall, on a date determined by the Commissioner or his designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or his designated hearing officer and serve on the other party, a proposed order. The Commissioner or his designated hearing officer shall then issue an order."

Sec. 18. G.S. 58-45-50 reads as rewritten:

"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from Commissioner to superior court.

Any person or any insurer who may be aggrieved by an act, ruling or decision of the Association other than an act, ruling or decision relating to the cause or amount of a claimed loss, may, within 30 days after such ruling appeal to the Commissioner. Any hearings held by the Commissioner of Insurance pursuant to such an appeal shall be in accordance with the procedure set forth in G.S. 58-2-50: Provided, however, the Commissioner of Insurance is authorized to appoint a member of his staff as deputy commissioner for the purpose of hearing such appeals and a ruling based upon such hearing shall have the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner of Insurance may appeal as is provided by the provisions of G.S. 58-2-75.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or his designated hearing officer and shall serve on the appellee a written statement of his case and any evidence he intends to offer at the hearing. No later than five days before such hearing, the appellee shall file with the Commissioner or his designated hearing officer and shall serve on the appellant a written

statement of his case and any evidence he intends to offer at the hearing. Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party. Each party shall, on a date determined by the Commissioner or his designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or his designated hearing officer and serve on the other party, a proposed order. The Commissioner or his designated hearing officer shall then issue an order."

Sec. 19. G.S. 58-46-30 reads as rewritten:

"§ 58-46-30. Appeals: judicial review.

The association shall provide reasonable means, to be approved by the Commissioner, whereby any person or insurer affected by any act or decision of the administrators of the Plan or underwriting association, other than an act or decision relating to the cause or amount of a claimed loss, may be heard in person or by an authorized representative, before the governing board of the association or a designated committee. Any person or insurer aggrieved by any decision of the governing board or designated committee, may be appealed to the Commissioner within 30 days from the date of such ruling or decision. The Commissioner, after hearing held pursuant to the procedure set forth in G.S. 58-2-50, shall issue an order approving or disapproving the act or decision with respect to the matter which is the subject of appeal. The Commissioner is authorized to appoint a member of his staff as deputy commissioner for the purpose of hearing such appeals and a ruling based on such hearing shall have the same effect as if heard by the Commissioner personally. All persons or insurers or their representatives aggrieved by any order or decision of the Commissioner may appeal as provided by the provisions of G.S. 58-2-75.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or his designated hearing officer and shall serve on the appellee a written statement of his case and any evidence he intends to offer at the hearing. No later than five days before such hearing, the appellee shall file with the Commissioner or his designated hearing officer and shall serve on the appellant a written statement of his case and any evidence he intends to offer at the hearing. Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party. Each party shall, on a date determined by the

Commissioner or his designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or his designated hearing officer and serve on the other party, a proposed order. The Commissioner or his designated hearing officer shall then issue an order."

Sec. 20. G.S. 58-2-25 reads as rewritten:

"§ 58-2-25. *Other deputies, actuaries, examiners and employees.*

The Commissioner shall appoint or employ such other deputies, actuaries, economists, examiners, licensed attorneys, rate and policy analysts, accountants, fire and rescue training instructors, market conduct analysts, insurance complaint analysts, investigators, engineers, building inspectors, risk managers, clerks and other employees as may be found necessary for the proper execution of the work of the Department, at such compensation as shall be fixed and provided by the Department of Administration. If the Commissioner finds it necessary for the proper execution of the work of the Insurance Department to contract with persons, except to fill authorized employee positions, all those contracts, except those provided for in Articles 36 and 37 of this Chapter, shall be made pursuant to the provisions of Article 3C of Chapter 143.

Whenever the Commissioner or any deputy or employee of the Department is requested or subpoenaed to testify as an expert witness in any civil or administrative action, the party making the request or filing the subpoena and on whose behalf the testimony is given shall, upon receiving a statement of the cost from the Commissioner, reimburse the Department for the actual time and expenses incurred by the Department in connection with the testimony."

Sec. 21. G.S. 105-228.8(e) reads as rewritten:

"(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, or to dedicated special purpose taxes based on premiums. For purposes of this section, seventy-five percent (75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall not be a special purpose obligation or assessment or a dedicated special purpose tax within the meaning of this subsection."

Sec. 22. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-2-215. *Consumer Protection Fund.*

(a) A special fund is created in the Office of the State Treasurer, to be known as the Department of Insurance Consumer Protection Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from the Fund shall be credited to the

Fund. Moneys in the Fund shall only be spent pursuant to warrants drawn by the Commissioner on the Fund through the State Treasurer. The Fund shall be subject to the provisions of the Executive Budget Act; except that the provisions of Article 3C of Chapter 143 of the General Statutes do not apply to subdivision (b)(1) of this section.

(b) All moneys credited to the Fund shall be used only to pay the following expenses incurred by the Department:

- (1) For the purpose of retaining outside actuarial and economic consultants, legal counsel, and court reporting services in the review and analysis of rate filings, in conducting all hearings, and through any final adjudication.
- (2) In connection with any delinquency proceeding under Article 30 of this Chapter, for the purpose of locating and recovering the assets of or any other obligations or liabilities owed to or due an insurer that has been placed under such proceeding.
- (3) In connection with any civil litigation, other than under Chapter 150B of the General Statutes or any appeal from an order of the Commissioner or his deputies, that is commenced against the Commissioner or his deputies and that arises out of the performance of their official duties, for the purpose of retaining outside consultants, legal counsel, and court reporting services to defend such litigation.

(c) Moneys appropriated by the General Assembly shall be deposited in the Fund and shall become a part of the continuation budget of the Department of Insurance. Such continuation budget amount shall equal the actual expenditures drawn from the Fund during the prior fiscal year plus the official inflation rate designated by the Director of the Budget in the preparation of the State Budget for each ensuing fiscal year; provided that if interest income on the Fund exceeds the amount yielded by the application of the official inflation rate, such continuation budget amount shall be the actual expenditures drawn from the Fund. In the event the amount in the Fund exceeds one million dollars (\$1,000,000) at the end of any fiscal year, such excess shall revert to the General Fund.

(d) In no event shall more than fifty percent (50%) of the amount in the Fund be allocated or spent for any one purpose specified in subsection (b) of this section in any fiscal year."

Sec. 23. G.S. 58-36-70(c) reads as rewritten:

"(c) Once begun, hearings must proceed without undue delay. At the hearing the burden of proving that the proposed rates are not excessive, inadequate, or unfairly discriminatory is on the Bureau. The Commissioner may disregard at the hearing any exhibits, judgments, or conclusions offered as evidence by the Bureau that were

developed by or available to or could reasonably have been obtained or developed by the Bureau at or before the time the Bureau made its proper filing and which exhibits, judgments, or conclusions were not included and supported in the filing; unless the evidence is offered in response to inquiries made at the hearing by the Department, the notice of hearing, or as rebuttal to the Department's evidence. If relevant data becomes available after the filing has been properly made, the Commissioner may consider such data as evidence in the hearing. The order of presenting evidence shall be (1) by the Bureau; (2) by the Department; (3) any rebuttal evidence by the Bureau regarding the Department's evidence; and (4) any rebuttal evidence by the Department regarding the Bureau's rebuttal evidence. Neither the Bureau nor the Department shall present repetitious testimony or evidence relating to the same issues. ~~The Bureau shall reimburse the Department for all reasonable costs incurred by the Department in retaining outside actuarial, economic, and legal consultants or counsel, and court reporting services, for the review of rate filings, in conducting hearings, and up to the time the Commissioner issues an order approving or disapproving the filing.~~

Sec. 24. There is appropriated from the General Fund to the Department of Insurance Consumer Protection Fund in the Office of the State Treasurer for fiscal year 1990-91 the sum of one million dollars (\$1,000,000) for the purposes specified in G.S. 58-2-215(b).

Sec. 25. For the purposes of G.S. 58-31-30, G.S. 143-3.6 and G.S. 143-3.7, fire districts shall be considered political subdivisions.

Sec. 26. G.S. 58-31-30 reads as rewritten:
"§ 58-31-30. Transfer from fund for local fire protection.

Of the funds available in the cash balance of the State Property Fire Insurance Fund and in addition to the money transferred pursuant to G.S. 143-3.6, ~~the sum of one million four hundred fifty thousand dollars (\$1,450,000)~~ five hundred thousand dollars (\$500,000) shall be transferred annually beginning in ~~1983-84~~ 1990-91 to the Office of State Budget and Management for compensating political subdivisions of the State for providing local fire protection on State-owned buildings and their contents, provided, however that beginning with the ~~1984-85~~ 1991-92 fiscal year if the State Treasurer makes a written finding to the Director of the Budget that the transfer for the ~~1984-85~~ 1991-92 fiscal year (or appropriate succeeding years) would cause financial instability in the State Property Fire Insurance Fund, then with the approval of the Director of the Budget, funds from the general fund shall supplement funds from the State Property Fire Insurance Fund that the State Treasurer certifies are available without causing financial instability so that the total State aid to local subdivisions under this section will remain at ~~one million four hundred fifty thousand dollars~~

~~(\$1,450,000)~~ five hundred thousand dollars (\$500,000) for each fiscal year. The Office of State Budget and Management shall develop an equitable and uniform statewide method for distributing these funds to the State's political subdivisions. Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission. This section shall expire at the end of the 1993-94 fiscal year."

Sec. 27. Article 1 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-3.6. Transfer from General Fund for local fire protection.

The sum of nine hundred fifty thousand dollars (\$950,000) shall be transferred annually, beginning with the 1990-91 fiscal year, from the General Fund to the Office of State Budget and Management for the purpose of compensating political subdivisions of the State for providing local fire protection to State-owned buildings and their contents. The Office of State Budget and Management shall develop an equitable and uniform statewide method for distributing these funds to the State's political subdivisions. If this section is amended by reducing the amount of funds transferred for a fiscal year, this section and Section 26 of House Bill 2257 of the 1989 General Assembly shall expire on the day after the General Assembly that enacted such amendment adjourns; and G.S. 58-31-30 shall read as it did immediately prior to the effective date of House Bill 2257 of the 1989 General Assembly."

Sec. 28. Article 1 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-3.7. Transfer from General Fund for local fire protection.

The sum of one million four hundred fifty thousand dollars (\$1,450,000) shall be transferred annually, beginning with the 1994-95 fiscal year, from the General Fund to the Office of State Budget and Management for the purpose of compensating political subdivisions of the State for providing local fire protection to State-owned buildings and their contents. The Office of State Budget and Management shall develop an equitable and uniform statewide method for distributing these funds to the State's political subdivisions. If this section is amended by reducing the amount of funds transferred for a fiscal year, this section and Section 26 of House Bill 2257 of the 1989 General Assembly shall expire on the day after the General Assembly that enacted such amendment adjourns; and G.S. 58-31-30 shall read as it did immediately prior to the effective date of House Bill 2257 of the 1989 General Assembly."

Sec. 29. Notwithstanding the payment prerequisites of G.S. 58-6-5(5), the Commissioner is authorized to bill rate and form filers for the fees until January 1, 1991.

Sec. 30. Section 21 of this act is effective for taxable years beginning on and after January 1, 1987.

Sec. 31. Section 23 of this act does not apply to the 1990 automobile rate filing made pursuant to Article 36 of Chapter 58 of the General Statutes. Section 27 of this act shall expire at the end of the 1993-94 fiscal year and Section 28 shall become effective upon the expiration of Section 27. If the General Assembly does not appropriate or transfer funds in accordance with Sections 1, 22, 26, 27, or 28 of this act for a fiscal year, Sections 1 through 14 and Sections 23 through 30 of this act shall expire on the day after the General Assembly adjourns without making the appropriations or transfers; and the statutes amended by Sections 2 through 14, 23, and 26 shall read as they did immediately prior to the effective date of this act.

Sec. 32. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 439

CHAPTER 1070

AN ACT TO ALLOW THE TOWN OF RICHFIELD TO COLLECT
UTILITY BILLS AS IF THEY WERE TAXES DUE THE TOWN.

The General Assembly of North Carolina enacts:

Section 1. Whenever water supply or distribution or sewage collection or disposal is provided by a town under Article 16 of Chapter 160A of the General Statutes, and the person legally responsible for payment of the rents, rates, fees or charges for the service fails to pay such rents, rates, fees or charges for more than 60 days after they became delinquent, the Town providing the service may treat the amount due as if it were a tax due to the Town and may proceed to collect the amount due through the use of levy on tangible personal property under G.S. 105-366 and G.S. 105-367.

Sec. 2. This act applies to the Town of Richfield only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 774

CHAPTER 1071

AN ACT TO LIMIT THE LIABILITY OF DIRECTORS,
OFFICERS, AND EMPLOYEES OF MEDICAL SERVICES
CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes is amended by adding new sections to read:

"Indemnification.

"§ 58-65-166. Policy statement and definitions.

(a) It is the public policy of this State to enable corporations organized under this Chapter to attract and maintain responsible, qualified directors, officers, employees, and agents, and, to that end, to permit corporations organized under this Chapter to allocate the risk of personal liability of directors, officers, employees, and agents through indemnification and insurance as authorized in this Part.

(b) Definitions in this Part:

- (1) 'Corporation' includes any not for profit domestic hospital, medical, or dental service corporation, or successor of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
- (2) 'Director' or 'Trustee' means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. 'Director' or 'Trustee' includes, unless the context requires otherwise, the estate or personal representative of a director or trustee.
- (3) 'Expenses' means expenses of every kind incurred in defending a proceeding, including counsel fees.
- (4) 'Liability' means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.
- (5) 'Official capacity' means: (i) when used with respect to a director or trustee, the office of director or trustee in a corporation; and (ii) when used with respect to an individual other than a director or trustee, as contemplated in G.S. 58-65-172, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. 'Official capacity' does not include service for any other foreign or

domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

- (6) 'Party' includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.
- (7) 'Proceeding' means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.
- (8) 'Trustee'. Whenever the term 'director' or 'directors' is used herein it shall include the term 'trustee', or a person who is designated as a 'trustee' under a corporation governed by this Article.

" § 58-65-167. Authority to indemnify.

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:

- (1) He conducted himself in good faith; and
- (2) He reasonably believed (i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and (ii) in all other cases, that his conduct was at least not opposed to its best interests; and
- (3) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(2)(ii).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of no contest or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

- (1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
- (2) In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation that is concluded without a final adjudication on the issue of liability is limited to reasonable expenses incurred in connection with the proceeding.

(f) The authorization, approval or favorable recommendation by the board of directors of a corporation of indemnification, as permitted by this section, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such indemnification shall be void or voidable on such ground.

" § 58-65-168. Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

" § 58-65-169. Advance for expenses.

Expenses incurred by a director in defending a proceeding may be paid by the corporation in advance of the final disposition of such proceeding as authorized by the board of directors in the specific case or as authorized or required under any provision in the articles of incorporation or bylaws or by any applicable resolution or contract upon receipt of an undertaking by or on behalf of the director to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation against such expenses.

" § 58-65-170. Court-ordered indemnification.

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines:

- (1) The director is entitled to mandatory indemnification under G.S. 58-65-168, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or
- (2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in G.S. 58-65-167 or was adjudged liable as described in G.S. 58-65-167(d), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

" § 58-65-171. Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under G.S. 58-65-167 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in G.S. 58-65-167.

(b) The determination shall be made:

- (1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;
 - (2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;
 - (3) By special legal counsel (i) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or (ii) if a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or
 - (4) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.
- (c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.
- " § 58-65-172. *Indemnification of officers, employees, and agents.*
- Unless a corporation's articles of incorporation provide otherwise:
- (1) An officer of the corporation is entitled to mandatory indemnification under G.S. 58-56-168 and is entitled to apply for court-ordered indemnification under G.S. 58-65-170, in each case to the same extent as a director;
 - (2) The corporation may indemnify and advance expenses under this Part to an officer, employee, or agent of the corporation to the same extent as to a director; and
 - (3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.
- " § 58-65-173. *Additional indemnification and insurance.*
- (a) In addition to and separate and apart from the indemnification provided for in G.S. 58-65-167, 58-65-168, 58-65-170, 58-65-171, and 58-65-172, a corporation may in its articles of incorporation or bylaws or by contract or resolution indemnify or agree to indemnify any one or more of its directors, officers, employees, or agents against

liability and expenses in any proceeding (including without limitation a proceeding brought by or on behalf of the corporation itself) arising out of their status as such or their activities in any of the foregoing capacities; provided, however, that a corporation may not indemnify or agree to indemnify a person against liability or expenses he may incur on account of his activities which were at the time taken known or believed by him to be clearly in conflict with the best interests of the corporation. A corporation may likewise and to the same extent indemnify or agree to indemnify any person who, at the request of the corporation, is or was serving as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise or as a trustee or administrator under an employee benefit plan. Any provision in any articles of incorporation, bylaw, contract, or resolution permitted under this section may include provisions for recovery from the corporation of reasonable costs, expenses, and attorneys' fees in connection with the enforcement of rights to indemnification granted therein and may further include provisions establishing reasonable procedures for determining and enforcing the rights granted therein.

(b) The authorization, adoption, approval, or favorable recommendation by the board of directors of a public corporation of any provision in any articles of incorporation, bylaw, contract or resolution, as permitted in this section, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such articles of incorporation or bylaw provision or contract or resolution shall be void or voidable on such grounds. The authorization, adoption, approval, or favorable recommendation by the board of directors of a nonpublic corporation of any provision in any articles of incorporation, bylaw, contract or resolution, as permitted in this section, which occurred on or prior to the effective date of this act, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such articles of incorporation, bylaw provision, contract or resolution shall be void or voidable on such grounds. Except as permitted in G.S. 55-8-31, no such bylaw, contract, or resolution not adopted, authorized, approved or ratified by shareholders shall be effective as to claims made or liabilities asserted against any director prior to its adoption, authorization, or approval by the board of directors.

(c) A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture,

trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under any provision of this Chapter.

" § 58-65-174. Application of Part.

(a) If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This Part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

(c) This Part shall not affect rights or liabilities arising out of acts or omissions occurring before the effective date of this act."

Sec. 2. This act shall become effective October 1, 1990.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 1579

CHAPTER 1072

AN ACT TO STAGGER FURTHER THE TERMS SERVED BY MEMBERS OF THE BOARD OF THE STATE PORTS AUTHORITY, TO ELIMINATE THE GOVERNOR'S ABILITY TO REMOVE MEMBERS OF THE BOARD OF THE STATE PORTS AUTHORITY WITHOUT CAUSE, AND TO PROVIDE THAT THE GENERAL ASSEMBLY MAY REMOVE MEMBERS OF THE BOARD ONLY FOR CAUSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-452 reads as rewritten:

" § 143B-452. Creation of Authority -- membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.

The North Carolina State Ports Authority is hereby created. It shall be governed by a board composed of nine members and hereby designated as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11 members and hereby designated as the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. The Governor shall appoint seven members to the Authority, and the General Assembly shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall consist of seven persons appointed by the

Governor, and four persons appointed by the General Assembly. Effective July 1, 1989, the Governor shall appoint six members to the Authority, in addition to the Secretary of Economic and Community Development, who shall serve as a voting member of the Authority by virtue of his office. The Secretary of Economic and Community Development shall fill the first vacancy occurring after July 1, 1989, in a position on the Authority over which the Governor has appointive power.

The initial appointments by the Governor shall be made on or after March 8, 1977, two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of six years.

To stagger further the terms of members:

- (1) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1991, one member shall be appointed to a term of five years, to expire on June 30, 1996; the other member shall be appointed for a term of six years, to expire on June 30, 1997;
- (2) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1993, one member shall be appointed to a term of five years, to expire on June 30, 1998; the other member shall be appointed to a term of six years, to expire on June 30, 1999;
- (3) Of those members appointed by the Governor to replace the members whose terms expire on July 1, 1995, one member shall be appointed to a term of five years, to expire on June 30, 2000; the other member shall be appointed to a term of six years, to expire on June 30, 2001.

Thereafter, at the expiration of each stipulated term of office all appointments made by the governor shall be for a term of six years.

The members of the Authority appointed by the Governor shall be selected from the State-at-large and insofar as practicable shall represent each section of the State in all of the business, agriculture, and industrial interests of the State. Any vacancy occurring in the membership of the Authority appointed by the Governor shall be filled by the Governor for the unexpired term. ~~The Governor shall have the authority to remove any member appointed by the Governor.~~ The Governor may remove a member appointed by the Governor only for reasons provided by G.S. 143B-13.

The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two

appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. To stagger further the terms of members:

- (1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;
- (2) Of the members appointed upon the recommendation of the President of the Senate to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993.

Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of two years.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members appointed by the General Assembly may be removed only for reasons provided by G. S. 143B-13.

The Governor shall appoint from the members of the Authority the chairman and vice-chairman of the Authority. The members of the Authority shall appoint a treasurer and secretary of the Authority.

The Authority shall meet once in each 60 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5."

Sec. 2. This act shall become effective June 30, 1990.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 1588

CHAPTER 1073

AN ACT TO SIMPLIFY THE PRIVILEGE LICENSE TAX ON RESTAURANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-62 reads as rewritten:

" § 105-62. *Restaurants.*

(a) Every person, firm, or corporation engaged in the business of operating a restaurant, cafe, cafeteria, ~~hotel,~~ hotel with dining service on the European plan, drugstore, or other place where prepared food is ~~sold,~~ sold shall apply for and procure from the Secretary of Revenue a State license for the privilege of ~~transacting such business,~~ engaging in the business. The tax for ~~such the~~ license ~~shall be based on the number of persons provided with chairs, stools, or benches,~~ and shall be one dollar (\$1.00) per person, with a minimum tax of fifty dollars (\$50.00); is fifty dollars (\$50.00) for a business that has no seating capacity for customers who purchase the food or seating capacity for no more than four customers and is eighty-five dollars (\$85.00) for a business that has seating capacity for at least five customers who purchase the food. ~~Provided, that the~~ The tax levied in this subsection ~~shall~~ does not apply to industrial plants maintaining a nonprofit restaurant, ~~cafe~~ cafe, or cafeteria solely for the convenience of its employees. ~~Provided further,~~ In addition, a person, firm, or corporation required to be licensed under this section is not required to procure the license under G.S. 105-102.5 for the same location.

(b) Repealed by Session Laws 1979, c. 150, s. 2.

(c) Counties, cities and towns shall not levy any license tax on the business taxed or any business exempted under this section, except that cities and towns may levy a license tax not in excess of one half of the ~~base~~ tax levied by the State.

(d) No tax shall be levied under this section, for the privilege of operating vending machines or the sale of any commodity through such machines, against any vending machine operator, licensed under G.S. 105-65.1 and required thereby to pay a gross receipts tax."

Sec. 2. This act shall become effective July 1, 1991.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 1427

CHAPTER 1074

AN ACT TO MAKE APPROPRIATIONS TO PROVIDE CAPITAL IMPROVEMENTS FOR STATE DEPARTMENTS.

INSTITUTIONS, AND AGENCIES AND TO MAKE OTHER
CHANGES IN THE BUDGET OPERATION OF THE STATE.

The General Assembly of North Carolina enacts:

Requested by: Senator Royall, Representative Diamont

-----TITLE OF ACT

Section 1. This act shall be known as the "Capital
Improvement Appropriations Act of 1990."

An outline of the provisions of the act follows this section. The
outline shows the heading "-----CONTENTS/INDEX-----" and it lists
by general category the descriptive captions for the various sections
and groups of sections that make up the act.

-----CONTENTS/INDEX-----

(This outline is designed for reference only, and the outline and
the corresponding entries throughout the act in no way limit, define,
or prescribe the scope or application of the text of the act.)

-----TITLE OF ACT	1
PART I.-----GENERAL FUND APPROPRIATIONS	3
-----CAPITAL IMPROVEMENTS/AMOUNTS DELAYED OR REVERTED	3
-----ADDITIONAL APPROPRIATIONS FOR CAPITAL PROJECTS	7
-----CONTINGENT APPROPRIATIONS FOR CAPITAL PROJECTS	9
-----NONRECURRING OPERATING APPROPRIATIONS	10
-----NONRECURRING STATE AID APPROPRIATIONS	10
-----CURRENT OPERATIONS/RECURRING EXPENSES	11
PART II.-----HIGHWAY FUND	12
-----CAPITAL IMPROVEMENTS	13
PART III.-----GENERAL PROVISIONS	13
-----PROJECTS ON DELAYED STATUS	13
-----RESTRICTION ON CAPITAL IMPROVEMENT EXPENDITURES/UNC ENGINEERING GRADUATE RESEARCH CENTER	13
-----USE OF REPAIRS AND RENOVATIONS RESERVE FUNDS/PROJECTS	14
-----INTANGIBLES TAX DISTRIBUTION	14
-----SEQUESTRATION OF FUNDS/NON-STATE AGENCIES ..	14
-----REVERSION OF CLEAN WATER REVOLVING LOAN/GRANT PROGRAM	14
-----REVERSION/REMAINDER \$120 MILLION WATER AND SEWER FUNDS	15

-----PUBLIC DEFENDER APPOINTMENT CHANGE	15
PART IV.-----GENERAL GOVERNMENT	15
-----CHARGES FOR OVERDRAFT IN STATE TREASURER'S DISBURSING ACCOUNT	15
-----INDIAN CULTURAL CENTER FUNDS	16
-----NORTH CAROLINA PERFORMING ARTS CENTER IN CHARLOTTE COMMITMENT COMPLETION	16
-----VETERANS HOME STUDY COMMISSION	16
PART V.-----EMPLOYEE BENEFITS	17
-----FUNDS FOR ADMINISTRATION OF PERFORMANCE PAY PLAN	17
-----LEO RETIREES/STATE HEALTH PLAN	17
PART VI.-----EDUCATION	18
-----SCHOOL SUPPLEMENTAL INSTRUCTIONAL MATERIAL/DIFFERENTIATED PAY PLANS	18
-----PARENTAL INVOLVEMENT IN SCHOOLS/STUDY	19
-----SCHOOL ADMINISTRATOR SALARY SCHEDULE	19
-----EDUCATION GOVERNANCE STUDY	20
-----YEAR-ROUND EDUCATION	20
-----PUBLIC SCHOOL TESTING FUNDS	20
PART VII.-----HUMAN RESOURCES	20
-----PRESCRIPTION DRUG REIMBURSEMENT CHANGE	20
-----HEAD START/ELDERLY AND NEEDY PROGRAM FUNDS	21
-----AREA MENTAL HEALTH PILOT PROGRAM	21
PART VIII.-----NATURAL AND ECONOMIC RESOURCES	21
-----NC AGRICULTURAL FINANCE AUTHORITY	21
-----COMMUNITY DEVELOPMENT CORPORATIONS FUNDS	22
-----WATER RESOURCES DEVELOPMENT PROJECTS	22
-----INSTITUTE OF STATISTICAL SCIENCES MATCHING FUNDS	23
-----TRANSFER OF TRAVEL AND TOURISM FUNDS	23
-----LEGISLATIVE SERVICES COMMISSION TO PAY FOR CHAIRMAN OF SENATE NATURAL AND ECONOMIC RESOURCES APPROPRIATIONS COMMITTEE TO ATTEND HIGHWAY OVERSIGHT COMMITTEE MEETINGS	23
PART IX.-----TRANSPORTATION	24
-----D.O.T. CONTRACT RETAINAGE DEPOSITS	24
PART X.-----MISCELLANEOUS PROVISIONS	24
-----EXECUTIVE BUDGET ACT APPLIES	24
-----MOST TEXT APPLIES ONLY TO 1990-91	24
-----1989-90 APPROPRIATIONS LIMITATIONS AND	

DIRECTIONS APPLY 24
-----EFFECT OF HEADINGS 24
-----SEVERABILITY CLAUSE 25
-----EFFECTIVE DATE 25

PART I.-----GENERAL FUND APPROPRIATIONS

-----CAPITAL IMPROVEMENTS/AMOUNTS DELAYED OR REVERTED

Sec. 2. (a) The Governor, acting pursuant to Article III, Section 5(3), of the Constitution to effect the necessary economies in State expenditures to balance the budget for the 1989-91 fiscal biennium, has placed all or part of the funds appropriated by the General Assembly for the projects set out on the following chart on a "delayed" status or reverted them.

The appropriations of funds in the amounts set out in the chart in the column headed "Amount Delayed or Reverted" are hereby repealed.

Appropriations are made from the General Fund for the 1990-91 fiscal year for use by State departments, institutions, and agencies for capital improvement projects, to replace the amounts delayed or reverted by the Governor and repealed herein by the General Assembly, according to the column headed "1990-91 Appropriation" in the following schedule:

Agency/Project	Amount Delayed or Reverted	1990-91 Appropriation
Department of Administration		
(Total)	\$ 28,002,480	\$ 21,303,955
1. Museum of Art - Landscaping	700.000	-
2. Education Building - Furnishings	1,407.980	-
3. New Steam Plant - Government Complex	6,594.500	6,594.500
4. Reserve for Asbestos Removal	750.000	-
5. New Revenue Building	18,000.000	14,159.455
6. Veterans Cemetery Funds	400.000	400.000

7. Indian Cultural Center - Planning	150,000	150,000
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Department of Agriculture

(Total)	10,162,994	8,789,394
1. Watercraft Museum	499,700	499,700
2. Western North Carolina Agricultural Center - Land	350,000	350,000
3. Mountain Research Station - Building	140,000	-
4. Southeastern Farmers Market	1,500,000	1,500,000
5. New Agronomics Lab	6,852,694	6,439,694
6. Garden Center Building - Charlotte	320,600	-
7. Piedmont Triad Market	500,000	-

**Board of Governors - University
of North Carolina**

(Total)	63,451,300	49,354,257
1. 1987 University-wide Construction	2,855,678	2,855,678
2. 1987 Advance Planning	350,000	350,000
3. 1988 Major Renovations and Repairs	4,865,660	4,793,242
4. 1988 Utilities Repairs and Improvements	1,692,000	1,598,657
5. 1988 Land Acquisition	689,920	689,920
6. 1988 University-wide Construction	5,352,932	5,062,150
7. 1988 Mitchell 4-H Camp - Repairs	214,000	214,000
8. 1988 UNC - Asheville -		

CHAPTER 1074

Session Laws — 1989

Conference Center	2,200,000	2,200,000
9. 1988 North Carolina Arboretum	1,062,810	1,062,810
10. N. C. State University -		
a. Engineering Graduate Center	6,000,000	3,000,000
b. Centennial Center	2,000,000	1,000,000
11. East Carolina University -		
a. Joyner Library Addition	6,000,000	2,000,000
b. Center for Regional Advancement	1,000,000	500,000
12. University of North Carolina at Chapel Hill -		
a. School of Business	6,500,000	5,000,000
b. Social Work Building	4,140,500	2,500,000
13. UNC - Asheville -		
a. Conference Center	2,000,000	2,000,000
b. Conference Center	2,000,000	-
14. Fayetteville State University - Health/Physical Educ. Building	8,677,800	8,677,800
15. Appalachian State University -		
a. Student Activities Center	2,000,000	2,000,000
b. Academic Support Building	500,000	500,000
16. N. C. Arboretum	1,250,000	1,250,000
17. Board of Governors - Land	1,000,000	1,000,000
18. Area Health Education Centers - Construction Grants	1,100,000	1,100,000
Department of Community Colleges		
(Total)	6,000,000	2,905,000
1. Anson Community College/Stnly Community College - Union Satellite	900,000	-
2. Cape Fear Community College - Classroom	500,000	-

3. Craven Community College - Student Activity Center	750,000	-
4. Fayetteville Technical Community College - Center for Applied Technology - Equipment	899,952	899,952
5. Isothermal Community College - Fine Arts Center	320,000	-
6. Johnston Community College - Renovate Library	90,000	90,000
7. Pitt Community College - Vocational Building	28,577	28,577
8. Roanoke-Chowan Community College - Technology/Small Business Center	368,645	368,645
9. Rockingham Community College - Lab/Classroom Building	1,032,826	407,826
10. Wake Technical Community College - Health Education Building	1,110,000	1,110,000

Department of Correction

(Total)	1,955,600	1,955,600
1. Reserve for Repairs - Statewide	347,800	347,800
2. Wastewater and Water System Improvements	133,400	133,400
3. Plumbing Repairs at 51 Units	517,600	517,600
4. Substance Abuse Facility (Correctional Center for Women)	62,800	62,800
5. DWI Treatment Facility (Goldsboro)	894,000	894,000

Department of Cultural Resources

(Total)	950,000	-
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CHAPTER 1074

Session Laws — 1989

1. Ziegler House - Renovation	400,000	-
2. C. H. Brown State Historic Site - Improvements	400,000	-
3. Spencer Shops - Round House Renovations	150,000	-

**Department of Economic and
Community Development**

(Total)	7,000,000	1,000,000
1. Biotechnology Center - Construction Grant	1,000,000	1,000,000
2. State Ports Authority - Expansion, Modernization, and Development	2,844,043	-
3. State Ports Authority Development		
a. Morehead City Port	2,130,263	-
b. Wilmington Port	1,025,694	-

**Department of Environment, Health,
and Natural Resources**

(Total)	9,550,000	7,700,000
1. State Park System - Repairs and Renovations/Improvements	2,000,000	1,000,000
2. State Park System - Land Purchases	400,000	-
3. Headquarters - Forest Resources County Headquarters - Beaufort, Rutherford and Cumberland counties	900,000	450,000
4. North Carolina Zoological Park - North American Phase	6,250,000	6,250,000

Department of Justice

(Total)	18,508,000	-
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1. State Bureau of Investigation Complex	18,508,000	-
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**NC Solid Waste Mgt Capital Projects
Financing Agency**

(Total)	5,000,000	900,000
1. Solid Waste Revolving Fund	5,000,000	900,000

Office of State Budget and Management

(Total)	52,736,698	43,660,094
1. Clean Water and Sewer Program	11,000,000	10,500,000
2. Emergency Prison Construction Program	27,160,094	27,160,094
3. Low-Level Radioactive Waste Site Selection	6,000,000	6,000,000
4. Satellite Jail/Work Release Units	8,576,604	-
GRAND TOTAL	\$203,317,072	\$137,568,300

(b) Except where expressly repealed or amended by this act, the provisions of law relating to the capital projects set out in subsection (a) of this section.

- (1) Are not affected by language in subsection (a) repealing the amounts appropriated and appropriating new funds for the projects and
- (2) Apply to the funds appropriated in subsection (a).

-----ADDITIONAL APPROPRIATIONS FOR CAPITAL PROJECTS

Sec. 3. Appropriations are made from the General Fund for the 1990-91 fiscal year for use by the State departments, institutions, and agencies to provide for capital improvement projects according to the following schedule:

Agency/Project	1990-91
Department of Administration	

1. New Museum of Natural Science - Planning	\$ 90,000
---	-----------

Department of Agriculture

- | | |
|--|---------|
| 1. Southeastern Farmers' Market -
Wastewater Treatment Facility | 140,000 |
|--|---------|

Board of Governors - University of North Carolina

(Total)	1,853,000
---------	-----------

- | | |
|--|-----------|
| 1. University of North Carolina at Chapel
Hill - Living and Learning Center for
Autistic Adults | 1,078,000 |
| 2. N. C. State University - Agriculture Programs -
Castle Hayne Horticultural Research Station -
Greenhouse and Support Facilities | 275,000 |
| 3. Board of Governors - Land Acquisition | 500,000 |

Department of Community Colleges

- | | |
|---|---------|
| 1. Repairs/Renovations of Franklin County
satellite of Vance - Granville | 133,592 |
|---|---------|

Department of Crime Control and Public Safety

- | | |
|---|-----------|
| 1. Construction of Armories at Clinton
and Goldsboro | |
| Total Requirements | 5,409,300 |
| Federal Matching | 3,941,500 |
| Local Matching | 733,900 |
| State Matching | 733,900 |

Department of Cultural Resources

- | | |
|---|--------|
| 1. Museum of the Albemarle - Continued Planning | 75,000 |
|---|--------|

Department of Economic and Community Development

(Total)	2,600,000
---------	-----------

- | | |
|--|---------|
| 1. State Ports Development - Long Range Planning | 100,000 |
| 2. National Institute of Statistical Sciences | |

(Research Triangle Park)	2,500,000
--------------------------	-----------

**Department of Environment, Health, and
Natural Resources**

(Total)	2,509,532
---------	-----------

- | | |
|--|-----------|
| 1. Coastal Reserves - Buxton Woods -
Federal Matching | 125,000 |
| 2. Reserve for Water Resources -
Federal Matching | 2,100,000 |
| 3. Shellfish Sanitation Lab Facility.
Wilmington | 284,532 |

Department of Human Resources

- | | |
|---|-----------|
| 1. Murdoch Center - Renovate Parkview Cottage | 1,400,000 |
|---|-----------|

Department of Justice

- | | |
|---|-----------|
| 1. Justice Academy - Classroom Building | 2,000,000 |
|---|-----------|

Office of State Budget and Management

(Total)	58,193,872
---------	------------

- | | |
|--|------------|
| 1. Reserve for Repairs and Renovations | 5,543,872 |
| 2. Clean Water Program - Federal Match | 6,150,000 |
| 3. Public School Construction Funds: | |
| a. ADM Fund Allocations | 36,500,000 |
| b. Critical Needs Allocations | 10,000,000 |

GRAND TOTAL	\$ 69,728,896
-------------	---------------

-----CONTINGENT APPROPRIATIONS FOR CAPITAL PROJECTS
Requested by: Senator Royall

Sec. 4. (a) Appropriations are made from the General Fund for the 1990-91 fiscal year for use by the State departments, institutions, and agencies to provide for capital improvement projects according to the following schedule:

Department of Justice

- | | |
|--|------------|
| 1. New State Bureau of Investigation Complex | 18,508,000 |
|--|------------|

Department of Environment, Health, and Natural Resources

- | | |
|---|-----------|
| 1. North Carolina Zoological Park -
Completion of the North American Phase | 4,953,000 |
|---|-----------|

GRAND TOTAL	23,461,000
-------------	------------

(b) Subsection (a) of this section shall become effective only if the Director of the Budget certifies that adequate nonrecurring revenue is available to support these expenditures and that adequate revenue is otherwise available to meet budgeted expenditures. The Director of the Budget may consult with the Advisory Budget Commission prior to making this certification.

-----NONRECURRING OPERATING APPROPRIATIONS

Sec. 5. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated are made for the fiscal year ending June 30, 1991, according to the schedule that follows. The amounts set out in the schedule are in addition to other appropriations from the General Fund for these purposes for the 1990-91 fiscal year. Amounts set out in brackets are reductions from General Fund appropriations for the 1990-91 fiscal year.

Current Operations - General Fund	1990-91
--	----------------

Department of Community Colleges

- | | |
|---------------------------------|-----------|
| 1. Equipment and Book Purchases | 6,000,000 |
|---------------------------------|-----------|

-----NONRECURRING STATE AID APPROPRIATIONS

Sec. 6. Appropriations from the General Fund of the State to State departments, institutions, and agencies for aid to certain governmental and nongovernmental units as enumerated are made for the fiscal year ending June 30, 1991, according to the following schedule:

Project	1990-91
Department of Agriculture	
1. Grant-in-Aid to the North Carolina Strawberry Association, Inc., for strawberry marketing and research	\$25,000
Department of Economic and Community Development	
(Total)	3,150,000
1. Industrial Economic Development Fund	1,500,000
2. North Carolina Housing Trust Fund	1,000,000
3. Rural Economic Development Center, Inc. - Grants to Community Development Corporations incorporated under Chapter 55A of the General Statutes	650,000
Board of Governors - University of North Carolina	
1. North Carolina State University-Research Triangle World Trade Center	50,000
Department of Human Resources	
1. HUD Group Homes - For start-up and operational costs of 15 group homes for the developmentally disabled and 2 group homes and 2 apartment projects for the mentally ill as approved in the 1989 Section 202 allocation by the U. S. Department of Housing and Urban Development	1,525,978
Department of Environment, Health, and Natural Resources	
(Total)	250,000

- | | |
|---|---------|
| 1. United Cerebral Palsy Group Homes
and Developmental Centers | 200,000 |
| 2. Rural Water Association, Inc. - Grant-in-aid | 50,000 |

Department of Cultural Resources

- | | |
|---|---------|
| 1. Grassroots Arts Program - to be distributed
on a per capita basis | 550,000 |
|---|---------|

**Office of State Budget and
Management**

(Total) 2,580,000

- | | |
|---|-----------|
| 1. North Carolina Performing Arts
Center - Charlotte | 2,100,000 |
| 2. Grant-in-Aid - Autistic Foundation
of N.C. for development of camp and
conference center | 300,000 |
| 3. North Carolina Poverty Project.
Inc. - Grant-in-Aid | 55,000 |
| 4. The Pack Place Education, Arts and Service
Center (Asheville) | 125,000 |

GRAND TOTAL	\$8,130,978
-------------	-------------

-----CURRENT OPERATIONS/RECURRING EXPENSES

Sec. 7. Appropriations from the General Fund of the State for maintenance of State departments, institutions, and agencies, and for other purposes as enumerated are made for the fiscal year ending June 30, 1991, according to the schedule that follows. The amounts set out in the schedule are in addition to other appropriations from the General Fund for these purposes for the 1990-91 fiscal year. Amounts set out in brackets are reductions from General Fund appropriations for the 1990-91 fiscal year.

General Fund 1990-91**Department of State Auditor**

1. Reduce State contributions to Pension Funds

based upon actuarial report.

- | | |
|---------------------------------------|----------|
| a. Firemen's Pension Fund | (95,859) |
| b. Rescue Squad Worker's Pension Fund | (41,302) |

Department of the Secretary of State

- | | |
|--|---------|
| 1. Reserve for implementation of the new N.C.
Business Corporation Act effective
January 1, 1991 | 386,160 |
|--|---------|

Department of State Treasurer

- | | |
|---|---------|
| 1. Increase funding for data processing services
in Investment Management Division | 150,000 |
|---|---------|

Department of Environment, Health, and Natural Resources

- | | |
|---|---------|
| 1. Children's Special Health Services
Funding Supplement | 900,000 |
|---|---------|

Department of Public Education

- | | |
|---|-----------|
| 1. Purchase of 100 additional school buses | 3,000,000 |
| 2. Additional support for Exceptional
Children Program | 2,000,000 |

Department of Revenue

- | | |
|--|-----------|
| 1. Reserve for workload created by passage of
bill to accelerate employer withholding
payments | 1,252,678 |
|--|-----------|

Department of Agriculture

- | | |
|---|---------|
| 1. Reserve for staff and support related to
new Raleigh Farmers' Market opening
January 1, 1991 | 200,000 |
|---|---------|

GRAND TOTAL	\$7,751,677
-------------	-------------

PART II.-----HIGHWAY FUND

-----CAPITAL IMPROVEMENTS

Sec. 8. Appropriations are made from the Highway Fund for the 1990-91 fiscal year for use of the Department of Transportation to provide for capital improvement projects according to the following schedule:

Agency/Project	1990-91
-----------------------	----------------

Division of Highways

1. Salt Storage Facilities	\$691,437
2. Division of Highways Roof Replacements	226,150
3. Land Acquisition and Sub-Maint.-Jonas Ridge	177,300
4. Division Office Annex-Ahoskie	400,000
5. Division Office Annex-Greenville	360,000
6. Site Completion-Taylorsville	359,700
7. Central Warehouse Expansion-Raleigh	226,225

Division of Motor Vehicles

1. Reserve for Repairs to Parking Lots	97,000
2. Reserve for Roof Replacements	94,300
3. Land purchase and building design-Asheville	180,000

GRAND TOTAL	\$2,812,112
-------------	-------------

PART III.-----GENERAL PROVISIONS

Requested by: Senator Royall, Representative Diamont

-----PROJECTS ON DELAYED STATUS

Sec. 9. Because adequate funds are not available for the 1990-91 fiscal year to meet all of the State's critical needs for capital projects and to appropriate funds for all projects that were placed on delayed status by the Governor, the General Assembly is unable to restore all of the funds for the projects or to meet other critical capital needs. The General Assembly urges the Governor to give highest

priority to funds for these projects when he prepares his proposed budget for the 1991-93 fiscal biennium.

Requested by: Senator Royall, Representative Holmes

-----RESTRICTION ON CAPITAL IMPROVEMENT
EXPENDITURES/UNC ENGINEERING GRADUATE RESEARCH
CENTER

Sec. 10. (a) Notwithstanding any other provision of law, capital improvement projects for which funds are appropriated in Sections 2, 3, and 4 of this act shall not be available for expenditure prior to January 1, 1991, and until the Director of the Budget has certified that nonrecurring revenue sufficient to support these expenditures has been realized or is anticipated to be realized prior to June 30, 1991. Prior to certification of funds as required under this section, the Director of the Budget may seek the advice of the Advisory Budget Commission.

This section is not applicable to any projects (i) on which construction contracts have been awarded; (ii) where federal, local, or private funds are available to match State funds; (iii) where agents of the State have made commitments to provide waste disposal facilities; or (iv) where necessary repairs must be made to State facilities.

(b) Notwithstanding subsection (a) of this section and any other provisions of law, funds appropriated for the 1990-91 fiscal year to the Board of Governors of The University of North Carolina for the Engineering Graduate Research Center at North Carolina State University shall be released as needed for site preparation and infrastructure for this facility on North Carolina State University's Centennial Campus.

Requested by: Senator Royall, Representative Holmes

-----USE OF REPAIRS AND RENOVATIONS RESERVE
FUNDS/PROJECTS

Sec. 11. (a) Notwithstanding G.S. 143-16.3, funds from the Repairs and Renovations Reserve may be used for repair and renovation of capital facilities for which the General Assembly considered but did not enact an appropriation of funds for the 1990-91 fiscal year.

(b) Of the funds appropriated to the Office of State Budget and Management for the 1990-91 fiscal year for repair and renovation projects, the following funds may be allocated for the following purposes:

- (1) Up to \$400,000 may be used for the Ziegler House for renovation;

- (2) Up to \$400,000 may be used for the C. H. Brown State Historic Site for improvements;
- (3) Up to \$150,000 may be used for Spencer Shops for Round House renovation; and
- (4) Up to \$400,000 may be used for Broughton Hospital for steam plant modifications.

Requested by: Senator Royall

-----INTANGIBLES TAX DISTRIBUTION

Sec. 12. Notwithstanding G.S. 105-213(a), as amended by Chapter 813 of the 1989 Session Laws, the distribution required to be made in the 1990-91 fiscal year by that subsection shall be made by September 15, 1990, instead of by August 30, 1990.

Requested by: Representative Holmes

-----SEQUESTRATION OF FUNDS/NON-STATE AGENCIES

Sec. 13. The Governor is urged, when performing his constitutional duty to balance the State budget, to consider sequestering State funds appropriated to non-State entities.

The Governor is urged, when performing his constitutional duty to balance the State budget, not to sequester funds appropriated to the Local Tax Reimbursement Reserve.

Requested by: Representative Diamont

-----REVERSION OF CLEAN WATER REVOLVING LOAN/GRANT PROGRAM

Sec. 14. The balance of \$133,592.20 remaining in the North Carolina Clean Water Revolving Loan and Grant Program-Administrative Account is reverted to the General Fund.

Requested by: Representative Holmes

-----REVERSION/REMAINDER \$120 MILLION WATER AND SEWER FUNDS

Sec. 15. Notwithstanding any other provision of law, funds appropriated to the Office of State Budget and Management as a Reserve for Clean Water Program by Section 4 of Chapter 480, Session Laws of 1985, (as limited by Section 5.12 of that act, as amended) that have not been contractually obligated by May 31, 1991, shall revert to the General Fund.

Requested by: Representative Michaux

-----PUBLIC DEFENDER APPOINTMENT CHANGE

Sec. 16. (a) Subsection (d) of Section 127 of Chapter 1066 of the 1989 Session Laws, the Current Operations Appropriations Act of 1990, is repealed.

(b) Effective July 1, 1990, but to expire on December 31, 1990, G.S. 7A-466(d) reads as rewritten:

"(d) Except in Defender District 16B, for each new term beginning on or after January 1, 1989, and to fill any vacancy, the public defender for a defender district shall be appointed from a list of not less than ~~two~~ three and not more than ~~three~~ five names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to regulations promulgated by the Administrative Office of the Courts. The appointment shall be made by the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-44.1 which includes the county or counties of the defender district for which the public defender is being appointed."

PART IV.-----GENERAL GOVERNMENT

Requested by: Senator Royall

-----CHARGES FOR OVERDRAFT IN STATE TREASURER'S DISBURSING ACCOUNT

Sec. 17. G.S. 143-3.2 reads as rewritten:

" § 143-3.2. *Issuance of warrants upon State Treasurer.*

(a) The State Controller shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer. All warrants upon the State Treasurer shall be signed by the State Controller, who before issuing them shall determine the legality of payment and the correctness of the accounts.

When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to make expenditures through a disbursing account with the State Treasurer. The State Controller shall authorize the Judicial Department and the General Assembly to make expenditures through such disbursing accounts. All deposits in these disbursing accounts shall be by the State Controller's warrant. A copy of each voucher making withdrawals from these disbursing accounts and any supporting data required by the State Controller shall be forwarded to the Office of the State Controller monthly or as otherwise required by the State Controller.

A central payroll unit operating under the Office of the State Controller may make deposits and withdrawals directly to and from a

disbursing account. The disbursing account shall constitute a revolving fund for servicing payrolls passed through the central payroll unit.

The State Controller may use a facsimile signature machine in affixing his signature to warrants.

(b) The State Treasurer may impose on an agency a fee of fifteen dollars (\$15.00) for each check drawn against the agency's disbursing account that causes the balance in the account to be in overdraft or while the account is in overdraft. The financial officer shall pay the fee from non-State or personal funds to the General Fund to the credit of the miscellaneous non-tax revenue account by the agency."

Requested by: Senator Parnell, Representative Holmes

-----INDIAN CULTURAL CENTER FUNDS

Sec. 18. (a) The State of North Carolina shall lease out for a period of 99 years at a monetary consideration of \$1.00 per year all the real property it acquired for the Indian Cultural Center, but no part of Phase I of the project may be constructed either by the State or for the lessee until an environmental impact assessment is completed on Phase I of the property, and if required pursuant to Article 1 of Chapter 113A of the General Statutes, an environmental impact statement is prepared.

Any lease agreement entered into by the State with the North Carolina Indian Cultural Center, Inc., shall include but not be limited to the following terms:

- (1) An environmental impact assessment pursuant to Article 1 of Chapter 113A of the General Statutes is completed on Phase I of the property.
- (2) The lease shall include a reversionary clause stipulating that the North Carolina Indian Cultural Center, Inc., must have the \$4,160,000 necessary to complete Phase I of this project in their possession, unencumbered, and subject to its immediate disposal within five years from the date of execution of the lease agreement.
- (3) If the funds are not so possessed within five years from the date of execution, then this lease agreement will automatically terminate.
- (4) The North Carolina Indian Cultural Center, Inc., as lessee, may conduct no construction of Phase I on the premises until it has fulfilled the terms of the lease agreement.

(b) Of the funds appropriated to the Department of Administration for fiscal year 1990-91 in Section 2 of this act for the Indian Cultural Center, the sum of \$100,000 shall be used for an environmental impact assessment, pursuant to Article 1 of Chapter 113A of the General Statutes, and construction of the Indian Cultural

Center and the sum of \$50,000 shall be used for operating costs of the Center, as a grant-in-aid.

Requested by: Representative Diamont

-----NORTH CAROLINA PERFORMING ARTS CENTER IN
CHARLOTTE COMMITMENT COMPLETION

Sec. 19. The appropriations in this act for the North Carolina Performing Arts Center in Charlotte, together with the interest earned on all the State funds appropriated for the center in any fiscal year, shall complete the State's commitment to provide \$15,000,000 for the construction of the North Carolina Performing Arts Center in Charlotte.

Requested by: Senator Raynor, Representatives Easterling, Hurley

-----VETERANS HOME STUDY COMMISSION

Sec. 20. (a) The Veterans Home Study Commission is created. The Commission shall consist of 10 members appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint one member from his or her respective body of the legislature and from the North Carolina American Legion, the North Carolina Veterans of Foreign Wars, the North Carolina Disabled American Veterans, and the North Carolina American Veterans of World War II (AMVETS) from a list submitted to each of them from the governing body of each organization containing three recommendations for Commission membership.

(b) The Speaker of the House of Representatives shall designate one member of the Commission as cochairman and the President Pro Tempore of the Senate shall designate one member as cochairman. The cochairmen shall call the initial meeting of the Commission.

(c) The Commission shall study the construction of a State veterans home, the identification of a site for the home, and the operation, management, and ongoing costs for a State veterans home. The Commission shall formulate funding recommendations to be made to the General Assembly that will fully implement a State veterans home program to serve adequately the veterans in North Carolina. The Commission may assist the State in making an application to secure federal grant matching funds for the construction of a State veterans home, may visit veterans homes in other states, and may contract with consultants, architects, engineers, contractors, and other experts in the field of veteran home construction.

(d) The Commission shall submit a report of its findings and recommendations to the 1991 General Assembly.

(e) Upon the approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be paid by the Commission. The Commission may employ professional staff as necessary to perform its duties. The Commission may meet in the State Legislative Building or the Legislative Office Building, upon the approval of the Legislative Services Commission.

(f) Members of the Commission shall be paid subsistence and travel allowances as follows:

- (1) Commission members who are also General Assembly members at the rate established in G.S. 120-3.1;
- (2) Commission members, if any, who are also officials or employees of the State at the rate established in G.S. 138-6; and
- (3) All other Commission members at the rate established in G.S. 138-5.

(g) The Commission may be funded from funds available to the Legislative Services Commission for the 1990-91 fiscal year.

PART V.-----EMPLOYEE BENEFITS

Requested by: Senator Johnson of Wake

-----FUNDS FOR ADMINISTRATION OF PERFORMANCE PAY PLAN

Sec. 21. Of the funds appropriated for fiscal year 1990-91 in Sections 3 and 4 of Chapter 752 of the 1989 Session Laws as a Reserve for Salary Increases and a Reserve for Compensation Increases, respectively, any amount not required to be transferred by the Director of the Budget from the Reserves to State agencies, departments, and institutions for salary and compensation increases may be transferred to the Department of Administration, up to a total amount not to exceed the sum of \$500,000, to be used by the Office of State Personnel in administering the performance pay plan for State employees subject to the same provisions of the State Personnel Act.

Requested by: Representative Lineberry

-----LEO RETIREES/STATE HEALTH PLAN

Sec. 22. (a) G.S. 135-40.2(a) reads as rewritten:

"(a) The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-40.3:

- (1) All permanent full-time employees of an employing unit who meet the following conditions:
 - a. Paid from general or special State funds, or
 - b. Paid from non-State funds and in a group for which his or her employing unit has agreed to provide coverage.
 Employees of State agencies, departments, institutions, boards, and commissions not otherwise covered by the Plan who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.
- (1a) Permanent hourly employees as defined in G.S. 126-5(c4) who work at least one-half of the workdays of each pay period.
- (2) Retired teachers, State employees, ~~and members of the General Assembly~~ Assembly, and retired State law enforcement officers who retired under the Law Enforcement Officers' Retirement System prior to January 1, 1985.
- (2a) Surviving spouses of:
 - a. Deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and
 - b. Deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986.
- (3) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(b), effective January 1, 1988.
- (3a) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.
- (4) Members of the General Assembly."
- (b) This section shall become effective the first day of the calendar month following ratification of this act, and applies to coverage in accordance with the provisions of G.S. 135-40.3.

PART VI.-----EDUCATION

Requested by: Senator Conder

-----SCHOOL SUPPLEMENTAL INSTRUCTIONAL MATERIAL/
DIFFERENTIATED PAY PLANS

Sec. 23. (a) G.S. 115C-98(b) reads as rewritten:

"(b) Local boards of education shall adopt written policies concerning the procedures to be followed in their local school administrative units for the selection and procurement of supplementary textbooks, library books, periodicals, audio-visual materials, and other supplementary instructional materials needed for instructional purposes in the public schools of their units.

Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, to determine if the materials are related to and within the limits of the prescribed curriculum, and to determine when the materials may be presented to students during the school day. Supplementary materials and contracts for supplementary materials are not subject to approval by the State Board of Education.

Supplementary books and other instructional materials shall neither displace nor be used to the exclusion of basic textbooks."

(b) G.S. 115C-47 is amended by adding a new subdivision to read:

"(33) Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, pursuant to the provisions of G.S. 115C-98(b)."

(c) G.S. 115C-238.4 is amended by adding a new subsection to read:

"(f) If a local school administrative unit bases its differentiated pay plan on a locally designed school-based performance program, pursuant to subdivision (a)(3) of this section, the plan shall provide that following the attainment of the local school goals, the local board of education shall make a determination of which certified staff members contributed to the attainment of those goals. Differentiated pay bonuses shall then be distributed to those designated employees. The local board of education shall make the determination upon recommendation of (i) the superintendent and (ii) any other person or committee designated in the local differentiated pay plan. The other person or committee designated in the local differentiated pay plan may be the principal, a school-based committee, or any other person or local committee."

(d) The State Board of Education shall study the use in the public schools of supplementary materials that contain commercial advertising or that identify commercial products and that are provided to the public schools at less than fair market value. The State Board shall evaluate the impact of these supplementary materials on the instructional program in the public schools.

The State Board shall report the results of this study to the General Assembly prior to March 15, 1991.

Requested by: Senator Kaplan

-----PARENTAL INVOLVEMENT IN SCHOOLS/STUDY

Sec. 24. The Education Study Commission, which was created in Part V of Chapter 802 of the 1989 Session Laws, shall study the concept of requiring parents to spend time at school with their children. During the course of this study, the Education Study Commission shall consider the legislation proposed in the first edition of Senate Bill 1524 of the 1989 Session.

Requested by: Senator Royall, Representative Diamont

-----SCHOOL ADMINISTRATOR SALARY SCHEDULE

Sec. 25. (a) Section 38(a1) of Chapter 752 of the 1989 Session Laws is repealed.

(b) Section 38(a2) of Chapter 752 of the 1989 Session Laws reads as rewritten:

"(a2) Superintendents, Assistant Superintendents, Associate Superintendents, Supervisors, Directors, Coordinators, Evaluators, Program Administrators, Principals, and Assistant Principals-1990-91. The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1990-91 funds necessary to provide an average annual salary increase of six percent (6%), including funds for the employer's retirement and Social Security contributions, commencing July 1, 1990, for all superintendents, assistant superintendents, associate superintendents, supervisors, directors, coordinators, evaluators, program administrators, principals, and assistant principals whose salaries are supported from the State's General Fund. ~~These funds shall be allocated to individuals according to rules adopted by the State Board of Education and the Superintendent of Public Instruction so as to begin the first year of the implementation schedule of the salary schedule developed pursuant to subsection (a1) of this section.~~ These funds may not be used for any purpose other than for the salary increase and necessary employer contributions provided by this subsection."

Requested by: Senator Royall

-----EDUCATION GOVERNANCE STUDY

Sec. 26. The Task Force on Excellence in Secondary Education of the Department of Public Instruction shall study the method of selecting education officials and the educational governance structure at the State level. The Task Force shall report the results of its study

and its recommendations to the General Assembly prior to the convening of the 1991 General Assembly.

Requested by: Representative Chapin

-----YEAR-ROUND EDUCATION

Sec. 27. (a) The State Board of Education shall study the concept of year-round education and shall develop policies and procedures for local school administrative units that want to implement year-round education. The State Board of Education shall report the results of its study and any policies and procedures it develops to the General Assembly prior to the convening of the 1991 General Assembly.

The State Board shall also develop a grant program for local school administrative units to use in planning for the implementation of year-round education.

(b) The Department of Public Instruction shall develop the ability to offer technical expertise to local school administrative units that want to implement year-round education.

(c) The Department of Public Education shall fund this study from funds available to it.

Requested by: Representative Diamont

-----PUBLIC SCHOOL TESTING FUNDS

Sec. 28. Of the funds appropriated for aid to local school administrative units for the 1990-91 fiscal year, the State Board of Education may allocate \$375,000 to the Department of Public Instruction to implement and administer end-of-course tests in physical sciences and English II (essay) and to develop end-of-grade tests for grades three through eight, necessary to implement the School Improvement and Accountability Act of 1989.

PART VII.-----HUMAN RESOURCES

Requested by: Senator Royall, Representative Diamont

-----PRESCRIPTION DRUG REIMBURSEMENT CHANGE

Sec. 29. (a) Section 70(a)(6), of Chapter 500 of the 1989 Session Laws, as rewritten by Section 139(a) of Chapter 752 of the 1989 Session Laws of the 1989 Session Laws, reads as rewritten:

"(6) *Drugs* - Drug costs as allowed by federal regulations plus ~~four dollars twenty-four cents (\$4.24)~~ four dollars forty-five cents (\$4.45) professional services fee per month excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be available for up to six prescriptions per recipient, per month, including refills.

Payments for drugs are subject to the provisions of subsection (g) of this section and to the provisions at the end of subsection (a) of this section, or in accordance with a plan adopted by the Department of Human Resources consistent with federal reimbursement regulations."

(b) Effective upon the reduction of the estimated drug acquisition cost below the Average Wholesale Price, Section 70(a)(6) of Chapter 500 of the 1989 Session Laws, as rewritten by Section 139(a) of Chapter 752 of the 1989 Session Laws, and as further rewritten by subsection (a) of this section, reads as rewritten:

"(6) *Drugs* - Drug costs as allowed by federal regulations plus ~~four dollars eighty-five cents (\$4.85)~~ five dollars ten cents (\$5.10) professional services fee per month excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be available for up to six prescriptions per recipient, per month, including refills. Payments for drugs are subject to the provisions of subsection (g) of this section and to the provisions at the end of subsection (a) of this section, or in accordance with a plan adopted by the Department of Human Resources consistent with federal reimbursement regulations."

(c) Section 139(b) of Chapter 752 of the 1989 Session Laws is repealed.

(d) Subsections (a), (b), and (c) of this section shall become effective only if the Department identifies funds available to it sufficient to implement the increases established pursuant to these subsections.

Requested by: Senators Walker, Marvin

-----HEAD START/ELDERLY AND NEEDY PROGRAM FUNDS

Sec. 30. (a) Of the funds appropriated in Section 6 of Chapter 1066 of the 1989 Session Laws, the Current Operations Appropriations Act of 1990 under the Social Services Block Grant for day care services, the sum of \$200,000 shall be allocated to the Department of Human Resources, Division of Economic Opportunity, for the continuation of Head Start programs and services for children eligible for these programs and services, and for the continuation of the services to the elderly and needy funded in Section 47 of Chapter 754 of the 1989 Session Laws.

(b) There is appropriated from the General Fund to the Department of Human Resources, Division of Economic Opportunity, the sum of \$50,000 for the 1990-91 fiscal year to continue funding for those Head Start programs and services and those services to the elderly and needy described in subsection (a) of this section.

Requested by: Representative H. Hunter

-----AREA MENTAL HEALTH PILOT PROGRAM

Sec. 31. The Secretary of Human Resources may designate as a pilot program one area mental health, developmental disabilities, and substance abuse authority to be covered by the provisions of G.S. 160A-20 as if it were a county. The area authority so designated may borrow an amount not to exceed \$100,000 as part of the transaction. No transaction may be entered into under this section after July 1, 1991. In applying this section, the Secretary shall use criteria to choose the area authority based on its readiness to proceed, and based on the ability of the proposal to provide separation of a partial hospitalization program and a psychosocial program for severely and persistently mentally ill clients.

PART VIII.-----NATURAL AND ECONOMIC RESOURCES

Requested by: Senator Plyler, Representative Redwine

-----NC AGRICULTURAL FINANCE AUTHORITY

Sec. 32. (a) Section 109 of Chapter 500 of the 1989 Session Laws is repealed, except that such repeal reenacts Chapter 122D of the General Statutes only as provided by subsection (b) of this section.

(b) Chapter 122D of the General Statutes is reenacted, with the exception of G.S. 122D-6(12), 122D-6(15), 122D-10, 122D-12, 122D-14, 122D-15, and 122D-17.

(c) G.S. 120-123(47) is reenacted.

(d) The amendment made to G.S. 53-234(6)(d) by Section 109(f) of Chapter 500, Session Laws of 1989, is repealed.

(e) Of the funds that were in the Reserve for Farm Loans on June 30, 1990, a sum not to exceed \$204,627 may be reallocated to the North Carolina Agricultural Finance Authority for the 1990-91 fiscal year for the administration of Chapter 122D of the General Statutes, notwithstanding any provision of law to the contrary.

Requested by: Senator Hunt, Representative Diamont

-----COMMUNITY DEVELOPMENT CORPORATIONS FUNDS

Sec. 33. (a) Of the funds appropriated to the Department of Economic and Community Development for the 1990-91 fiscal year for the Rural Economic Development Center, Inc., the sum of \$650,000 shall be used for grants to be disbursed to community development corporations which are incorporated under Chapter 55A of the General Statutes and which currently serve minority and underdeveloped communities.

(b) The Rural Economic Development Center, Inc., shall make a written report by May 1, 1991, to the General Assembly on the use of the funds appropriated under subsection (a) of this section.

(c) No funds allocated under subsection (a) of this section shall be used for administrative expenses of the Rural Economic Development Center, Inc., and any interest earned on unexpended funds shall be used for grants pursuant to subsection (a) of this section.

Requested by: Representative Diamont

-----WATER RESOURCES DEVELOPMENT PROJECTS

Sec. 34. (a) Of the funds appropriated to the Department of Environment, Health, and Natural Resources for the 1990-91 fiscal year, the sum of \$2,100,000 shall be used for water resources development projects. The Department shall fund the following projects, whose estimated costs are as indicated:

(1)	Morehead City Harbor Maintenance Dredging	\$ 50,000
(2)	Beaufort Harbor Maintenance Dredging	80,000
(3)	Lower Creek (City of Lenoir) Flood Control	169,000
(4)	Aquatic Weed Control Projects	37,000
(5)	Carolina Beach Renourishment	800,000
(6)	State/Local Water Development Projects	278,000
(7)	Wilmington Harbor Passing Lane Study	18,000
(8)	Wilmington Harbor Turns and Bends Study	13,000
(9)	Corps of Engineers Feasibility Studies as funds are available	
(10)	Colington Bay Navigation	200,000
(11)	Small Watershed	380,000
(12)	Great Coharie (Sampson County) Flood Control	75,000

(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects listed in subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 1990-91 fiscal year, or if the projects listed in subsection (a) are accomplished at a lower cost, the Department may use the resulting fund availability to fund:

(1) Corps of Engineers project feasibility studies, or

- (2) Corps of Engineers projects whose schedules have advanced and require State matching funds in fiscal year 1990-91.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 1991-92 fiscal year.

(c) Beginning October 1, 1990, the Department shall make quarterly reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Director of the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include:

- (1) All projects listed in subsection (a) of this section;
- (2) The estimated cost of each project;
- (3) The date work on each project began or is expected to begin;
- (4) The date work on each project was completed or is expected to be completed; and
- (5) The actual cost of each project.

The quarterly reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

Requested by: Representative Holmes

-----INSTITUTE OF STATISTICAL SCIENCES MATCHING FUNDS

Sec. 35. Funds appropriated for the 1990-91 fiscal year to the Department of Economic and Community Development for the Institute of Statistical Sciences shall be matched on the basis of one State dollar for one non-State dollar.

No State funds shall be disbursed until the design or construction contracts are awarded for the Institute's facility.

Requested by: Representatives B. Ethridge, Redwine

-----TRANSFER OF TRAVEL AND TOURISM FUNDS

Sec. 36. The Department of Economic and Community Development may transfer up to \$176,000 of the funds appropriated for the 1990-91 fiscal year for promotional advertising in the Division of Travel and Tourism to establish and maintain two positions for direct marketing and one position for media development.

Requested by: Senator Basnight

-----LEGISLATIVE SERVICES COMMISSION TO PAY FOR CHAIRMAN OF SENATE NATURAL AND ECONOMIC RESOURCES APPROPRIATIONS COMMITTEE TO ATTEND HIGHWAY OVERSIGHT COMMITTEE MEETINGS

Sec. 37. The Legislative Services Commission shall pay the costs of the attendance of the Chairman of the Senate Appropriations

Committee on Natural and Economic Resources at all meetings of the Joint Legislative Highway Oversight Committee. These subsistence and travel expenses shall be as provided in G.S. 120-3.1.

PART IX.-----TRANSPORTATION

Requested by: Senators Basnight, Plyler

-----D.O.T. CONTRACT RETAINAGE DEPOSITS

Sec. 38. Chapter 136 of the General Statutes is amended by adding a new section to read:

" § 136-28.9. Retainage - construction contracts.

Notwithstanding the provisions of G.S. 147-69.1, 147-77, 147-80, 147-86.10, and 147-86.11, or any other provision of the law, the Department of Transportation is authorized to enter into trust agreements with banks and contractors for the deposit of retainage and for the payment to contractors of income on these deposits, in connection with highway construction contracts, in trust accounts with banks in accordance with Department of Transportation regulations, including deposit insurance and collateral requirements. The Department of Transportation may contract with those banks without trust departments in addition to those with trust departments. Funds deposited in any trust account shall be invested only in bonds, securities, certificates of deposits, or other forms of investment authorized by G.S. 147-69.1 for the investment of State funds. The trust agreement may also provide for interest to be paid on uninvested cash balances."

PART X.-----MISCELLANEOUS PROVISIONS

Requested by: Senator Royall, Representative Diamont

-----EXECUTIVE BUDGET ACT APPLIES

Sec. 39. The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

Requested by: Senator Royall, Representative Diamont

-----MOST TEXT APPLIES ONLY TO 1990-91

Sec. 40. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1990-91 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1990-91 fiscal year.

Requested by: Senator Royall, Representative Diamont

-----1989-90 APPROPRIATIONS LIMITATIONS AND
DIRECTIONS APPLY

Sec. 41. Except where expressly repealed or amended by this act, the provisions of Chapters 500, 752, 754, 795, and 799 of the 1989 Session Laws, as amended, and Chapter 1066 of the 1989 Session Laws, the Current Operations Appropriations Act of 1990, as amended, remain in effect.

Sec. 42. Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 1990-91 fiscal year in Chapters 500, 752, 754, 795, and 799 of the 1989 Session Laws, as amended, and Chapter 1066 of the 1989 Session Laws, the Current Operations Appropriations Act of 1990, as amended, that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations and budget reductions of this act for those same particular purposes.

Requested by: Senator Royall, Representative Diamont

-----EFFECT OF HEADINGS

Sec. 43. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Senator Royall, Representative Diamont

-----SEVERABILITY CLAUSE

Sec. 44. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Senator Royall, Representative Diamont

-----EFFECTIVE DATE

Sec. 45. Except as otherwise provided, this act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

AN ACT TO REQUIRE PROPER TREATMENT AND DISPOSAL
OF SEWAGE AND OTHER WASTE FROM CHEMICAL AND
PORTABLE TOILETS AND TO CLEAN UP VARIOUS

TECHNICAL ERRORS IN THE GENERAL STATUTES AND THE SESSION LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-29(c) as amended by Section 50 of Chapter 1004 of the 1989 Session Laws, 1990 Regular Session, reads as rewritten:

"(c) The Commission shall adopt rules:

- (1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.
- (2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o);
- (3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522;
- (4) Establishing requirements for the sanitation of local confinement facilities as provided in Part 2 of Article 10 of Chapter 153A of the General Statutes; and
- (5) ~~Governing environmental impact statements and information required in applications to determine eligibility for water supply systems under the provisions of the North Carolina Clean Water Bond Act of 1977, Chapter 677 of the 1977 Session Laws.~~
- (6) Requiring proper treatment and disposal of sewage and other waste from chemical and portable toilets."

Sec. 2. G.S. 130A-335 is amended by adding a new subsection to read:

"(h) It shall be unlawful to discharge sewage or other waste from chemical or portable toilets used for human waste at places of public assembly, construction sites, or labor camps except into a sanitary sewage system which has been approved by the Department."

Sec. 3. G.S. 162A-7(c1), as amended by Section 44 of Chapter 1004 of the 1989 Session Laws, 1990 Regular Session, reads as rewritten:

"(c1) ~~Upon~~ Based upon the considerations set out ~~is~~ in subsection (c) of this section, the Commission may grant its certificate in whole or in part or it may refuse the same."

Sec. 4. Notwithstanding Section 59 of Chapter 1004 of the 1989 Session Laws, 1990 Regular Session, Sections 1, 2, and 36 of Chapter 1004 of the 1989 Session Laws, 1990 Regular Session, and the amendments to G.S. 113-28.23, recodified as G.S. 108B-23, made by Section 35 of Chapter 1004 of the 1989 Session Laws, 1990 Regular Session, are effective 1 July 1989. Section 33 of Chapter

1004 of the 1989 Session Laws, 1990 Regular Session, applies to this section and the sections of Chapter 1004 of the 1989 Session Laws, 1990 Regular Session, referred to in this section.

Sec. 5. Notwithstanding Section 59 of Chapter 1004 of the 1989 Session Laws, 1990 Regular Session, Section 47 of Chapter 1004 of the 1989 Session Laws, 1990 Regular Session, is effective 11 July 1990.

Sec. 6. G.S. 143-215.6(a)(6), as enacted by Section 1 of Chapter 951 of the 1989 Session Laws, 1990 Regular Session, is recodified as G.S. 143-215.6A(i). G.S. 143-215.6A as enacted by Section 2 of Chapter 951 of the 1989 Session Laws, 1990 Regular Session, is recodified as G.S. 143-215.6D.

Sec. 7. G.S. 143B-181.9A(d)(1), as amended by Section 57 of Chapter 1004 of the 1989 Session Laws, 1990 Regular Session, reads as rewritten:

"(1) One member each appointed by the Secretary of the Department of Human Resources from the Divisions of Aging, of Medical Assistance, of Mental Health, ~~Mental Retardation,~~ Developmental Disabilities, and Substance Abuse Services, of Social Services, and one director of an area agency on aging elected from among all the directors of the area agencies on aging. One member appointed by the Secretary of Environment, Health, and Natural Resources ~~from the Division of Health Services, Resources."~~

Sec. 8. The catch line to G.S. 143-215.88A, as set out in Section 7 of Chapter 1045 of the 1989 Session Laws, 1990 Regular Session, reads as rewritten:

"§ ~~143-215.88A.~~ 143-215.88A. *Enforcement procedures: civil penalties.*"

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 2284

CHAPTER 1076

AN ACT TO CREATE A SENTENCING AND POLICY ADVISORY COMMISSION AND TO ESTABLISH A UNIFORM STANDARD FOR THE DEVELOPMENT OF CRIMINAL JUSTICE POLICY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 164 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4.

"Sentencing Commission." § 164-35. Commission established.

The North Carolina Sentencing and Policy Advisory Commission is established. As used in this Article, the term 'Commission' means the North Carolina Sentencing and Policy Advisory Commission.

" § 164-36. Powers and duties.

Sentences established for violations of the State's criminal laws should be based on the established purposes of our criminal justice and corrections systems. The Commission shall evaluate sentencing laws and policies in relationship to both the stated purposes of the criminal justice and corrections systems and the availability of sentencing options. The Commission shall make recommendations to the General Assembly for the modification of sentencing laws and policies, and for the addition, deletion, or expansion of sentencing options as necessary to achieve policy goals.

" § 164-37. Membership; chairman; meetings; quorum.

The Commission shall consist of 23 members as follows:

- (1) The Chief Justice of the North Carolina Supreme Court shall appoint a sitting or former Justice or judge of the General Court of Justice, who shall serve as Chairman of the Commission;
- (2) The Chief Judge of the North Carolina Court of Appeals, or another judge on the Court of Appeals, serving as his designee;
- (3) The Secretary of Correction or his designee;
- (4) The Secretary of Crime Control and Public Safety or his designee;
- (5) The Chairman of the Parole Commission, or another parole commissioner serving as his designee;
- (6) The President of the Conference of Superior Court Judges or his designee;
- (7) The President of the District Court Judges Association or his designee;
- (8) The President of the North Carolina Sheriff's Association or his designee;
- (9) The President of the North Carolina Association of Chiefs of Police or his designee;
- (10) One member of the public at large, who is not currently licensed to practice law in North Carolina, to be appointed by the Governor;
- (11) One member to be appointed by the Lieutenant Governor;
- (12) One member of the House of Representatives, to be appointed by the Speaker of the House;

- (13) One member of the Senate, to be appointed by the President Pro Tempore of the Senate;
- (14) The President Pro Tempore of the Senate shall appoint the representative of the North Carolina Sentencing Alternatives Association that is recommended by the President of that organization;
- (15) The Speaker of the House of Representatives shall appoint the member of the business community that is recommended by the President of the North Carolina Retail Merchants Association;
- (16) The Chief Justice of the North Carolina Supreme Court shall appoint the criminal defense attorney that is recommended by the President of the North Carolina Academy of Trial Lawyers;
- (17) The President of the Conference of District Attorneys or his designee;
- (18) The Lieutenant Governor shall appoint the member of the North Carolina Victim Assistance Network that is recommended by the President of that organization;
- (19) A rehabilitated former prison inmate, to be appointed by the Chairman of the Commission;
- (20) The President of the North Carolina Association of County Commissioners or his designee;
- (21) The Governor shall appoint the member of the academic community, with a background in criminal justice or corrections policy, that is recommended by the President of The University of North Carolina;
- (22) The Attorney General, or a member of his staff, to be appointed by the Attorney General;
- (23) The Governor shall appoint the member of the North Carolina Bar Association that is recommended by the President of that organization.

The Commission shall have its initial meeting no later than September 1, 1990, at the call of the Chairman. The Commission shall meet a minimum of four regular meetings each year. The Commission may also hold special meetings at the call of the Chairman, or by any four members of the Commission, upon such notice and in such manner as may be fixed by the rules of the Commission. A majority of the members of the Commission shall constitute a quorum.

" § 164-38. *Terms of members; compensation; expenses.*

The Commission members shall serve for a period of two years, unless they resign or are removed. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the

members first appointed. A member of the Commission may be removed only for disability, neglect of duty, incompetence, or malfeasance in office. Before removal, the member is entitled to a hearing.

The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6 as applicable.

" § 164-39. Executive director and other staff.

The Commission shall employ an Executive Director from candidates presented to it by the Chairman and the Director of the Administrative Office of the Courts. The Executive Director shall have appropriate training and experience to assist the Commission in the performance of its duties. The Executive Director shall be responsible for compiling the work of the Commission and drafting suggested legislation incorporating the Commission's findings for submission to the General Assembly.

Subject to the approval of the Chairman, the Executive Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. Commission staff shall use office space provided by the Director of the Administrative Office of the Courts.

" § 164-40. Correction population simulation model.

The Commission shall develop a correctional population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Secretary of the Department of Correction, in second priority to the work of the Commission.

" § 164-41. Classification of offenses - ranges of punishment.

(a) The Commission shall classify criminal offenses into felony and misdemeanor categories on the basis of their severity.

(b) In determining the proper category for each felony and misdemeanor, the Commission shall consider, to the extent that they have relevance, the following:

- (1) The nature and degree of harm likely to be caused by the offense, including whether it involves property, irreplaceable property, a person, number of persons, or a breach of the public trust;
- (2) The deterrent effect a particular classification may have on the commission of the offense by others;
- (3) The current incidence of the offense in the State as a whole;
- (4) The rights of the victim.

(c) For each classification of felonies and misdemeanors formulated pursuant to subsection (b), the Commission shall assign a suggested range of punishment. The Commission shall take into consideration the current range of punishment for each offense.

" § 164-42. Sentencing structures.

(a) The Commission shall recommend structures for use by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including:

- (1) Imposition of an active term of imprisonment;
- (2) Imposition of a term of probation;
- (3) Suspension of a sentence to imprisonment and imposition of probation with conditions, including the appropriate probation option or options, including house arrest, regular probation, intensive probation, restitution, and community service;
- (4) Based upon the combination of offense and defendant characteristics in each case, the presumptively appropriate length of a term of probation, or a term of imprisonment;
- (5) Ordering multiple sentences to terms of imprisonment to run concurrently or consecutively;
- (6) For a sentence to probation without a suspended sentence to imprisonment, the maximum term of confinement to be imposed if the defendant violates the conditions of probation.

(b) The sentencing structures shall be consistent with the goals, policies, and purposes of the criminal justice and corrections systems, as set forth in Sections 2 and 3 of the Sentencing and Policy Advisory Commission Act of 1990. As part of its work, the Commission shall offer recommendations for the incorporation of those sections into the sentencing laws of North Carolina. In formulating structures, the Commission also shall consider:

- (1) The nature and characteristics of the offense;
- (2) The severity of the offense in relation to other offenses;

- (3) The characteristics of the defendant that mitigate or aggravate the seriousness of his criminal conduct and the punishment deserved therefor;
- (4) The defendant's number of prior convictions;
- (5) The available resources and constitutional capacity of the Department of Correction, local confinement facilities, and community-based sanctions;
- (6) The rights of the victims;
- (7) That felony offenders sentenced to an active term of imprisonment, or whose suspended sentence to imprisonment is activated, should serve a designated minimum percentage of their sentences before they are eligible for parole; and
- (8) That misdemeanor offenders sentenced to an active term of imprisonment, or whose suspended sentence to imprisonment is activated, should serve a designated minimum percentage of their sentence before they are eligible for parole.

(c) The Commission shall also consider the policy issues set forth in G.S. 164-42.1 in developing its sentencing structures.

(d) The Commission shall include with each set of sentencing structures a statement of its estimate of the effect of the sentencing structures on the Department of Correction and local facilities, both in terms of fiscal impact and on inmate population.

" § 164-42.1. Policy recommendations.

Using the studies of the Special Committee on Prisons, the Governor's Crime Commission, and other analyses, including testimony from representatives of the bodies that conducted the analyses, the Commission shall:

- (1) Determine the long-range needs of the criminal justice and corrections systems and recommend policy priorities for those systems;
- (2) Determine the long-range information needs of the criminal justice and corrections systems and acquire that information as it becomes available;
- (3) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve those problems;
- (4) Assess the cost-effectiveness of the use of State and local funds in the criminal justice and corrections systems;
- (5) Recommend the goals, priorities, and standards for the allocation of criminal justice and corrections funds;

- (6) Recommend means to improve the deterrent and rehabilitative capabilities of the criminal justice and corrections systems;
- (7) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems;
- (8) Determine the sentencing structures for parole decisions;
- (9) Examine the impact of mandatory sentence lengths as opposed to the deterrent effect of minimum mandatory terms of imprisonment;
- (10) Examine good time and gain time practices;
- (11) Study the value of presentence reports;
- (12) Consider the rehabilitative potential of the offender and the appropriate rehabilitative placement;
- (13) Examine the impact of imprisonment on families of offenders;
- (14) Examine the impact of imprisonment on the ability of the offender to make restitution; and
- (15) Study the need for an amendment to Article XI, Section 1 of the State Constitution to include restitution, restraints on liberty, work programs, or other punishments to the list of punishments allowed under that section.
- (16) Study the costs and consequences of criminal behavior in North Carolina and consider the value of preventing crimes by using incarceration to deter both prospective criminals and convicted criminals from future crimes.

" § 164-42.2. Community corrections.

The Commission shall recommend a comprehensive community corrections strategy and organizational structure for the State based upon the following:

(a) A review of existing community-based corrections programs in the State;

(b) The identification of additional types of community corrections programs, including residential programs, necessary to create an effective continuum of corrections sanctions in North Carolina;

(c) The identification of categories of offenders who would be eligible for sentencing to community corrections programs and the impact that the use of a comprehensive range of community-based sanctions would have on sentencing practices;

(d) A form of State oversight and coordination to ensure that community corrections programs are coordinated in order to achieve maximum impact; and

(e) A mechanism for State funding and local community participation in the operation and implementation of community corrections programs;

(f) An analysis of the rate of recidivism of clients under the supervision of the existing community-based corrections programs in the State, recidivism here measured as the clients committing new crimes at any time subsequent to their entry into a community-based corrections program.

" § 164-43. Priority of duties; reports; continuing duties.

(a) The Commission shall have two primary duties, and other secondary duties essential to accomplishing the primary ones. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this Article.

It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

(1) The classification of criminal offenses as described in G.S. 164-41 and the formulation of sentencing structures as described in G.S. 164-42; and

(2) The formulation of proposals and recommendations as described in G.S. 164-42.1 and G.S. 164-42.2.

(b) The Commission shall report its findings and recommendations to the 1991 General Assembly, 1991 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

(c) The recommendations for the classification and ranges of punishment for felonies and misdemeanors, required by G.S. 164-41, and sentencing structures, established pursuant to G.S. 164-42, shall be submitted prior to the 1991 General Assembly, 1992 Regular Session.

(d) Once the primary duties of the Commission have been accomplished, it shall have the continuing duty to monitor and review the criminal justice and corrections systems in this State to ensure that sentencing remains uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing practices, and it shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model developed pursuant to G.S. 164-40 shall continue to be used by the State.

(e) Upon adoption of a system for the classification of offenses formulated pursuant to G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range

of punishment for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f), and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model to the provisions of the bill.

" § 164-44. *Statistical information: financial or other aid.*

(a) The Commission shall have the secondary duty of collecting, developing, and maintaining statistical data relating to sentencing and corrections so that the primary duties of the Commission will be formulated using data that is valid, accurate, and relevant to this State. All State agencies shall provide data as it is requested by the Commission. All meetings of the Commission shall be open to the public and the information presented to the Commission shall be available to any State agency or member of the General Assembly.

(b) The Commission shall have the authority to apply for, accept, and use any gifts, grants, or financial or other aid, in any form, from the federal government or any agency or instrumentality thereof, or from the State or from any other source including private associations, foundations, or corporations to accomplish any of the duties set out in this Chapter.

" § 164-45. *Administrative direction and supervision.*

The Commission shall be administered under the direction and supervision of the Director of the Administrative Office of the Courts. The Commission shall exercise all of its prescribed statutory powers independently of the head of that Office, except that all management functions shall be performed under the direction and supervision of the Director of the Administrative Office of the Courts. 'Management functions,' as used in this section, means planning, organizing, staffing, directing, coordinating, and budgeting."

Sec. 2. It is the constitutional responsibility of the North Carolina judicial system to discover the truth, to the best of its ability, in every case before it and to establish whether the accused is guilty or not guilty. In those cases where the defendant is found guilty, the court shall dispense justice for the public, the victim, and the defendant through the judgment imposed.

Sec. 3. The following purposes and policies are hereby established:

- (1) Protection of the public. Incarceration should be viewed by the court both as punishment and as a means of protecting the public. Limitations on the freedom of the offender and the appropriate level of custody should be dictated in the first instance by the nature of the offense, the violent character of the offender, the proclivity of the offender to engage in criminal conduct as demonstrated by his criminal record, and the sound judgment of the sentencing court after taking into account all of the relevant aggravating and mitigating factors involved in the offenders' record of criminal conduct.
- (2) Punishment of the offender. After the interests of public protection have been addressed, consideration should be given to restriction of the liberty of the offender in such manner and to such extent as is necessary to demonstrate clearly that the offender's conduct is unacceptable to society and to discourage a repetition of such conduct. In determining the appropriate punishment, the court should consider a range of sanctions at the State or community level which may include incarceration, various degrees of restrictions on the offender's liberty including house arrest, various degrees of supervision, community penalties, community service, restitution, reparation, or fines.
- (3) Rehabilitation of the offender. Every sentencing plan should consider treatment and rehabilitative needs of the offender to the extent that it addresses the cause of the criminal behavior and, therefore, might assist in correcting such behavior. The offender should be enrolled in a program of rehabilitation over a definite minimal period of time. The program of rehabilitation should involve work and recreation and may involve education, psychological or psychiatric counseling, treatment for alcohol or drug abuse and sexual aggression either within or without the prison walls as the individual case may indicate. The court may recommend remedies for alcoholism, substance abuse, mental illness, education and employment deficiencies, and may order community-based offenders to pay for such treatment to the

extent the offender is able. Public institutions should respond to the court order at no cost to the indigent offender. Where treatment is not available from public institutions, the State should purchase appropriate treatment from the private sector.

- (4) Restitution and reparation. When appropriate, the sentencing plan should provide for restitution or reparation to the victim or victims, whether they be individual citizens, corporations, or society as a whole, to be paid as soon as practicable. Such restitution or reparation should include repayment for any property stolen or damaged, medical costs and lost wages of the victims, court costs and reasonable costs to cover pretrial detention, and restitution to the community through community service. In those cases where the offender can be punished and rehabilitated outside of prison without jeopardizing the security of the society at large in their persons or property, it is appropriate and encouraged that the offender pay his debt to society through a range of punishments which are alternative to incarceration. The court should order such supervision or restrictions as deemed necessary for the offender to comply with the restitution orders. Failure to comply should result in stricter measures.
- (5) Work policy for offenders. It is the policy of this State that offenders should work when reasonably possible, either at jobs in the private sector to pay restitution and support their dependents, or at community service jobs that benefit the public, or at useful work while in prison or jail, or at educational or treatment endeavors as a part of a rehabilitation program. Offenders should be offered the opportunity to reduce the duration of their sentences by earning "time" credit for work endeavors in achieving vocational or educational skill levels. Prisoners who are able and do not work or who refuse to participate in treatment programs should be prohibited from enjoying privileges which may be provided to inmates beyond those required by law.
- (6) Responsibility of Department of Correction. It is the goal of the North Carolina Department of Correction to provide adequate prison space to insure that those sentenced to prison will remain incarcerated until such time as they can be safely released, or until their active sentences are completed, and to provide community based supervision for

those offenders selected for supervised probation and parole by the courts and the Parole Commission.

It is the mission of the Department's Division of Prisons to provide housing, clothing, food, and medical care to its inmates, to maintain a safe and secure prison system, to keep accurate records, to offer job training, education, counseling, work and treatment programs deemed appropriate to monitor and advance the rehabilitative progress of its inmates, to provide a fair and orderly progression through custody levels, and to make data and recommendations regarding parole available to the Parole Commission. As an inmate demonstrates that he/she is no longer a threat to society, that the punishment has been effective and that a program of rehabilitation is showing progress, the inmate's level of custody may be commensurately reduced in an orderly progression through custody levels to parole and release from supervision.

It is the mission of the Department's Division of Adult Probation and Parole to receive convicted offenders selected by the courts and the Parole Commission and to protect society through a coordinated program of community supervision which provides realistic opportunities for probationers and parolees to develop skills necessary to adjust to free society. As a probationer or parolee demonstrates that the supervision has been effective and that a community treatment program is showing progress, the level of supervision may be commensurately reduced in an orderly progression to prepare for release from supervision.

Sec. 4. The North Carolina Sentencing and Policy Advisory Commission, in performing its duties pursuant to Article 4 of Chapter 164 of the General Statutes, shall make recommendations consistent with the purposes and policies stated in Sections 2 and 3 of this act. Sections 2 and 3 of this act are only for the purpose of providing policy guidance for the development of comprehensive criminal justice and corrections systems by the Commission.

Sec. 5. The Substance Abuse Treatment in Prisons Study, established by Section 19.1 of Chapter 802 of the 1989 Session Laws, is transferred from the Special Committee on Prisons to the Mental Health Study Commission. The unexpended funds appropriated to the General Assembly for the 1989-90 fiscal year for the Substance Abuse Treatment in Prisons Study are transferred to the Department of Human Resources (Budget Code 14460 subhead 1110) to conduct the study. Of funds appropriated to the General Assembly for the 1989-90 fiscal year, there is transferred the sum of \$10,000 to the Department

of Human Resources (Budget Code 14460 subhead 1110) for the Mental Health Study Commission to conduct the Substance Abuse Treatment in Prisons Study for the 1990-91 fiscal year.

Any pending responsibilities of the Special Committee on Prisons, which terminates upon submission of its final report to the 1989 General Assembly, 1990 Regular Session, shall be transferred to the Sentencing and Policy Advisory Commission upon the ratification of this act.

Sec. 6. Notwithstanding any other provision of law, no State agencies, committees, or commissions may duplicate the statutorily-prescribed responsibilities of the Sentencing and Policy Advisory Commission unless said agency, committee, or commission is acting within functions specifically assigned to it by another act of the 1989 Session of the General Assembly.

Sec. 7. This act shall be known as the "Sentencing and Policy Advisory Commission Act of 1990."

Sec. 8. This act is effective upon ratification, and shall expire July 1, 1992.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 1598

CHAPTER 1077

AN ACT TO INCREASE THE RETIREMENT FORMULA FOR MEMBERS AND BENEFICIARIES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, AND TO PROVIDE AN INCREASE TO RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM, THE LEGISLATIVE RETIREMENT SYSTEM, AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly of North Carolina finds that (1) retirees and beneficiaries of the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, and the Legislative Retirement System paid no State income tax on their benefits prior to 1989; (2) the tax policy of North Carolina provided for a tax exemption on all money in, or paid by, these systems prior to 1989; and (3) compensation is due the retirees and beneficiaries for

the loss of the tax exemption, except for a \$4,000 exclusion, as much as possible within the limits of available resources.

Sec. 2. G.S. 135-5(b11) reads as rewritten:

"(b11) Service Retirement Allowance of Members Retiring on or after July 1, ~~1989~~, 1989, but before July 1, 1990. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b. c. and d."

Sec. 3. G.S. 135-5 is amended by adding a new subsection to read:

"(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b. c. and d."

Sec. 4. G.S. 135-5 is amended by adding a new subsection to read:

"(rr) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session)."

Sec. 5. G.S. 135-5 is amended by adding a new subsection to read:

"(ss) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be

increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990."

Sec. 6. G.S. 135-58(a) reads as rewritten:

"(a) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 before July 1, 1990, after he either has attained his sixty-fifth birthday or has completed 24 years or more of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be computed as the sum of (1), (2) and (3) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which he is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System or the North Carolina Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three fourths of his final compensation:

- (1) Four percent (4%) of his final compensation, multiplied by the number of years of his creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;
- (2) Three and one-half percent (3 1/2%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the superior court or as administrative officer of the courts;
- (3) Three percent (3%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the district court, district attorney, or clerk of superior court."

Sec. 7. G.S. 135-58 is amended by adding a new subsection to read:

"(a1) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 on or after July 1, 1990, after he either has attained his 65th birthday or has completed 24 years or more of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be computed as the sum of (1), (2), and (3) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which

he is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System or the North Carolina Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three-fourths of his final compensation:

- (1) Four and two-hundredths percent (4.02%) of his final compensation, multiplied by the number of years of his creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;
- (2) Three and fifty-two hundredths percent (3.52%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the superior court or as administrative officer of the courts;
- (3) Three and two-hundredths percent (3.02%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the district court, district attorney, or clerk of superior court."

Sec. 8. G.S. 135-65 is amended by adding a new subsection to read:

"(k) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session)."

Sec. 9. G.S. 135-65 is amended by adding a new subsection to read:

"(l) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989. Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990."

Sec. 10. G.S. 120-4.21 reads as rewritten:

" § 120-4.21. Service retirement benefits.

(a) Eligibility; Application. -- Any member in service may retire with full benefits who has reached 65 years of age with five years of

creditable service. Any member in service may retire with reduced benefits who has reached the age of 60 years with five years of creditable service. The member shall make written application to the Board of Trustees to retire on a service retirement allowance on the first day of the particular calendar month he designates. The designated date shall be no less than one day nor more than 90 days from the filing of the application. During this period of notification, a member may separate from service without forfeiting his retirement benefits.

(b) Computation. -- Upon retirement from service in accordance with subsection (a) of this ~~section~~ section before July 1, 1990, a member shall receive a service retirement allowance computed as follows:

- (1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four percent (4%) of his 'highest annual salary,' multiplied by the number of years of creditable service.
- (2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent ($1/4$ of 1%) for each month his retirement date precedes his 65th birthday.

(b1) Computation. -- Upon retirement from service in accordance with subsection (a) of this section on or after July 1, 1990, a member shall receive a service retirement allowance computed as follows:

- (1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four and two-hundredths percent (4.02%) of his 'highest annual salary,' multiplied by the number of years of creditable service.
- (2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent ($1/4$ of 1%) for each month his retirement date precedes his 65th birthday.

(c) Limitations. -- In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his 'highest annual salary' nor shall he receive any service retirement allowance whatever while employed in a position that makes him a contributing member of any of the following retirement systems: The Teachers' and State Employees' Retirement System, the North

Carolina Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Retirement System, the Uniform Judicial Retirement System of North Carolina, the Uniform Solicitorial Retirement System of North Carolina or the Uniform Clerks of Court Retirement System of North Carolina. If he should become a member of any of these systems, payment of his service retirement allowance shall be suspended until he withdraws from membership in that system."

Sec. 11. G.S. 120-4.22A is amended by adding a new subsection to read:

"(f) In accordance with subsection (a) of this section, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1990, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(rr) and (ss)."

Sec. 12. Of funds appropriated to the General Assembly, the sum of \$172,000 shall be transferred to the Legislative Retirement System to fund the provisions of subsections 10 and 11.

Sec. 13. G.S. 128-27(b11) reads as rewritten:

"(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, 1989, but before July 1, 1990. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years

of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

- b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3)."

Sec. 14. G.S. 128-27 is amended by adding a new subsection to read:

"(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.

- b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.

- b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3)."

Sec. 15. G.S. 128-27 is amended by adding a new subsection to read:

"(hh) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session)."

Sec. 16. G.S. 128-27 is amended by adding a new subsection to read:

"(ii) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990."

Sec. 17. The State's contribution rate budgeted for the University Employees' Optional Retirement Program is increased from eight and thirty-seven hundredths percent (8.37%), as contained in the Current Operations Appropriations Act of 1990, to eight and forty-one hundredths percent (8.41%). The foregoing contribution rate includes one and sixty-five hundredths percent (1.65%) for hospital and medical benefits and fifty-two hundredths percent (0.52%) for the Disability Income Plan.

Sec. 18. Section 17 of this act is effective August 1, 1990. The remainder of the act is effective July 1, 1990.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 296

CHAPTER 1078

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO ALLOCATE FUNDS THEREFOR.

The General Assembly of North Carolina enacts:
PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1990."

An outline of the provisions of the act follows this section. The outline shows the heading "-----CONTENTS/INDEX-----" and lists by general category the descriptive captions for the various sections and groups of sections that compile the act.

-----CONTENTS/INDEX-----

This outline is designed for reference only, and the outline and the corresponding entries throughout the act in no way limit, define, or prescribe the scope or application of the text of the act. The listing of the original bill or resolution in the outline of this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the provisions contained in the original bill or resolution.

PART II.-----LEGISLATIVE RESEARCH COMMISSION

- Sec. 2.1**
- Sec. 2.2**
- Sec. 2.3**
- Sec. 2.4**
- Sec. 2.5**
- Sec. 2.6**
- Sec. 2.7**
- Sec. 2.8**
- Sec. 2.9**
- Sec. 2.10**
- Sec. 2.11**

PART III.-----ENERGY ASSURANCE STUDY COMMISSION (S.B. 1558 - Rauch)

- Sec. 3.1**
- Sec. 3.2**
- Sec. 3.3**

PART IV.-----COSMETIC ARTS REGULATION

- Sec. 4.1**
- Sec. 4.2**

PART V.-----BIRTH-RELATED NEUROLOGICAL IMPAIRMENT STUDY COMMISSION (H.B. 2296 - Miller)

- Sec. 5.1**
- Sec. 5.2**
- Sec. 5.3**

Sec. 5.4**Sec. 5.5****PART VI.-----OPEN GOVERNMENT THROUGH PUBLIC
TELECOMMUNICATIONS STUDY COMMISSION****Sec. 6.1****Sec. 6.2****Sec. 6.3****Sec. 6.4****Sec. 6.5****Sec. 6.6****Sec. 6.7****PART VII.-----SCHOOL IMPROVEMENT ACT STUDY (H.J.R.
2367 - Nesbitt)****Sec. 7.1****Sec. 7.2****PART VIII.-----STATE LAW ENFORCEMENT STUDY****Sec. 8.1****Sec. 8.2****PART IX.-----EFFECTIVE DATE****Sec. 9.1**

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 or 1990 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

- (1) Small System and Individual Water and Wastewater Needs (H.B. 2373 - Hardaway),
- (2) Health Insurance Pool (H.B. 985 - Hunt, Judy),
- (3) Veterans' Home (H.B. 2139 - Hurley),
- (4) Public Attorneys Education Assistance (S.B. 1269), and
- (5) Infrastructure Bonds (S.B. 1582 - Carpenter).

Sec. 2.2. Bed and Breakfast Inn Regulation Study. The Legislative Research Commission may study the issue of regulating

bed and breakfast inns in the 5 to 20 room classification, including the following:

- (1) the legal definition of a bed and breakfast inn for the purposes of statewide uniform administration of the Public Health Law of North Carolina;
- (2) the need for exemptions from the following regulations:
 - (a) commercial grade, stainless steel NSF-approved kitchen equipment;
 - (b) separate family kitchens;
 - (c) public restrooms for the dining room;
 - (d) private baths with each guest room;
 - (e) employees' restrooms;
 - (f) extra handwashing basins;
 - (g) three-basin sinks;
 - (h) sprinkler systems;
- (3) tax issues relating to the operation of bed and breakfast inns.

Sec. 2.3. Prescription Drug Assistance (H.B. 2149 - Green). The Legislative Research Commission may study the issue of creating a prescription drug assistance program, including the following:

- (1) Medication needs of low-income persons;
- (2) State/local/private cooperative efforts to provide prescription drugs at reduced cost or no cost to low-income persons;
- (3) Eligibility for the program; and
- (4) Financing and costs of the program.

Sec. 2.4. Public Transportation Financing Study - continued (H.B. 2301 - Blue). Section 7 of Chapter 740 of the 1989 Session Laws reads as rewritten:

"Sec. 7. The Legislative Research Commission shall make a comprehensive study of financing of public transportation in North Carolina, and contracting with the private sector for public transportation services, and report its interim recommendations to the 1989 Regular Session, (1990 Regular Session) and its final recommendations to the 1991 Regular Session of the General Assembly."

Sec. 2.5. Mail Order Sales Taxes Study (H.B. 2334 - Pope). The Legislative Research Commission may authorize its Revenue Laws Study Committee, created pursuant to Section 2.1 of Chapter 802 of the 1989 Session Laws, or such other committee as it deems appropriate, to study the issue of the constitutionality of mail order sales taxes.

Sec. 2.6. Budget Restructuring and Legislative Session Study (S.B. 1388 - Goldston; H.B. 2293 - Pope). The Legislative Research Commission may study the following:

- (1) Whether in preparing and enacting the budget for a fiscal year, the Governor and General Assembly shall use as the State funds revenue estimate for the General, Highway, and Wildlife Funds no more than the total State funds received for the calendar year ending December 31 immediately prior to the fiscal year.
- (2) Whether if the budget estimates any reversions at the end of the fiscal year covered by the budget, those reversions may be proposed only for capital projects, or other projects with a fiscal impact only in that fiscal year.
- (3) Whether the State should go to an annual rather than a biennial budget and limit future session lengths by statute.
- (4) If the Committee makes favorable recommendations concerning the above provisions, any necessary technical provisions, as well as a proposed transition period to enable a smoother change in budget process.

Sec. 2.7. Hazardous Waste Management Study. The Legislative Research Commission may study the broad problem of hazardous waste management and the reduction of waste to the end that the safest, most cost-effective, most efficient, and most scientifically sound methods of reduction, recycling, recovery and management of waste will become more readily apparent to the ordinary citizen and taxpayer. The direction of the study shall not be inconsistent with the State of North Carolina's existing interstate agreements concerning hazardous waste management.

Sec. 2.8. Committee Membership. For each Legislative Research Commission Committee created during the 1989-1991 biennium, the Cochairmen of the Commission each shall appoint a minimum of seven members.

Sec. 2.9. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1991 General Assembly.

Sec. 2.10. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.11. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART III.-----ENERGY ASSURANCE STUDY COMMISSION (S.B. 1558 - Rauch)

Sec. 3.1. Notwithstanding the provisions of Section 6.7 of Chapter 802 of the 1989 Session Laws, there is allocated from funds appropriated to the General Assembly the sum of \$10,000 for the 1990-91 fiscal year to fund the North Carolina Energy Assurance Study Commission created in Part VI of Chapter 802 of the 1989 Session Laws.

Sec. 3.2. Notwithstanding the provisions of Section 6.7 of Chapter 802 of the 1989 Session Laws, funds allocated to the North Carolina Energy Assurance Study Commission for the 1989-90 fiscal year that have not been expended at the end of that fiscal year shall not revert but shall remain available to the Study Commission for its expenses during the 1990-91 fiscal year.

Sec. 3.3. Section 6.4 of Chapter 802 of the 1989 Session Laws reads as rewritten:

"Sec. 6.4. The Commission may file an interim report on or before June 1, 1990, and shall file its final report ~~by February 1, 1991,~~ prior to adjournment of the 1991 Session of the 1991 General Assembly, with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The report shall summarize the information obtained in the course of the Commission's inquiry, set forth its findings and conclusions, and recommend administrative actions or legislative actions that may be necessary to implement the Energy Assurance Plan. If legislation is recommended, the Commission shall prepare and submit with its report appropriate bills. Upon termination of the Commission, the cochairs shall transmit to the Legislative Library for preservation the records and papers of the Commission. The Commission shall terminate upon the filing of its report."

PART IV.-----COSMETIC ARTS REGULATION

Sec. 4.1. In addition to the study authorized pursuant to Part XXIII of Chapter 802 of the 1989 Session Laws, the Legislative Committee on New Licensing Boards may meet during the interim to study the following issues related to the State Board of Cosmetic Art Examiners and the regulation of the practice of cosmetic art and manicuring:

- (1) The requirements for graduation with respect to eligibility to take the examination for licensure as a cosmetologist or apprentice cosmetologist;
- (2) Continuing education requirements for cosmetologists;
- (3) Board rules governing cosmetology school size, curricula, lab equipment, and related regulations affecting such schools; and

- (4) Feasibility of teaching cosmetic arts and/or manicuring in high schools.

Sec. 4.2. The Legislative Committee on New Licensing Boards shall file its report with the General Assembly by submitting copies on or prior to the date of convening of the 1991 General Assembly with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

PART V.-----BIRTH-RELATED NEUROLOGICAL IMPAIRMENT STUDY COMMISSION (H.B. 2296 - Miller)

Sec. 5.1. The Birth-Related Neurological Impairment Study Commission, created by Section 6.1 of Chapter 1100 of the 1987 Session Laws and continued by Chapter 64 of the 1989 Session Laws, is revived and shall continue in existence until the *sine die* adjournment of the 1991 Regular Session. The Commission shall report its findings and recommendations to the 1991 General Assembly.

Sec. 5.2. The continued Birth-Related Neurological Impairment Study Commission shall have the powers and duties of the original Commission as they are necessary to continue the original study, and to plan further activity on the subject of assisting all birth-related neurologically impaired victims.

Sec. 5.3. Members and staff of the continued Birth-Related Neurological Impairment Study Commission shall receive compensation and expenses as under the original authorization in Chapter 1100 of the 1987 Session Laws.

Sec. 5.4. The members of the Birth-Related Neurological Impairment Study Commission shall be those members originally appointed to the Commission pursuant to Part VI of Chapter 1100 of the 1987 Session Laws (1988 Regular Session) and the following two new members: (i) one member of the North Carolina State Bar specializing in the representation of birth-related neurologically impaired victims, appointed by the Speaker of the House of Representatives and (ii) a director or operator of a long-term residential care facility for birth-related neurologically impaired victims, appointed by the President of the Senate.

Sec. 5.5. Of the funds appropriated to the General Assembly there is allocated the sum of \$25,000 for the 1990-91 fiscal year to fund the work of the Birth-Related Neurological Impairment Study Commission.

PART VI.-----STUDY COMMISSION ON OPEN GOVERNMENT THROUGH PUBLIC TELECOMMUNICATIONS

Sec. 6.1. There is created the Study Commission on Open Government Through Public Telecommunications, to be composed of 13 members, with three Senators appointed by the President Pro Tempore of the Senate; three Representatives, one of whom is the Legislative Liaison to the Open Public Events Network Committee, to be appointed by the Speaker of the House; the current and two previous chairmen of the Public Telecommunications Board of Commissioners; the chairman of the Open Public Events Network (ex officio member of the Board of Commissioners by statute); the Secretary of the Department of Administration (designated by statute as ex officio member and secretary of the Board of Commissioners); the chairman of the Planning Committee of the Board of Commissioners; and a representative of the North Carolina cable television industry. Appointments will be made within 30 days subsequent to the *sine die* adjournment of the 1989 Regular Session. The chairman of the Study Commission shall be the Legislative Liaison to the Open Public Events Network Committee.

Sec. 6.2. The Study Commission shall study the advisability, feasibility and costs of expanding the Open Public Events Network to include gavel-to-gavel coverage of the North Carolina General Assembly, and as a part of the study, the Study Commission shall consider (i) leasing bulk satellite transponder time and (ii) selling off excess (unused) time, with some income from sale dedicated to support operating costs of the expanded Open Public Events Network.

Sec. 6.3. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Study Commission. The Department of Administration, through the Agency for Public Telecommunications, will provide substantial staffing of the Study Commission, with the assistance of the staffs of other State agencies as needed.

Sec. 6.4. The Study Commission will file a written report, including recommended legislation, with the presiding officers of the House of Representatives and the Senate, by March 1, 1991. The Study Commission will be considered dissolved upon *sine die* adjournment of the 1991 Regular Session.

Sec. 6.5. Members of the Study Commission shall be paid compensation and per diem and travel expenses in accordance with G.S. 138-5. Members who are legislators shall be reimbursed for travel and subsistence in accordance with G.S. 120-3.1. Witnesses from outside Raleigh invited to testify will be reimbursed for travel expenses at State rates.

Sec. 6.6. The Study Commission will bear the costs of teleconferences arranged to receive testimony advancing the work of the Study Commission.

Sec. 6.7. There is allocated from the funds appropriated to the General Assembly the sum of \$15,000 for the 1990-91 fiscal year to the Study Commission on Open Government Through Public Telecommunications for its work, provided, however, that the Legislative Services Commission may allocate additional funds necessary to enable the Commission to complete its study.

PART VII.-----SCHOOL IMPROVEMENT ACT STUDY (H.J.R. 2367 - Nesbitt)

Sec. 7.1. In addition to the issues authorized for study pursuant to Section 5.4 of Chapter 802 of the 1989 Session Laws, the Education Study Commission may study methods of increasing involvement of parents and teachers in developing local school improvement plans under the Performance-based Accountability Program and of increasing the involvement of teachers in approving such plans.

Sec. 7.2. The study may include the provisions of Section 1 of House Bill 2367, as introduced on June 6, 1990, which provided (a) for the involvement of over fifty percent (50%) of the teachers in a local school administrative unit in developing the unit's local school improvement plan, for (b) a vote by teachers in each individual school for approving the strategies for that school for attaining the local student performance goals, and (c) for a vote by teachers and administrators before submission of a local school improvement plan to the State Superintendent for approval. The study may also include consideration of methods of involvement of substantial numbers of parents in developing the unit's local school improvement plan.

PART VIII.-----STATE LAW ENFORCEMENT STUDY

Sec. 8.1. Section 107 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 107. The Joint Legislative Commission on Governmental Operations shall conduct a study of State law enforcement agencies and of other State agencies having law enforcement responsibility. This study shall include:

- (1) Consideration of a method to coordinate the activities of these agencies as appropriate and to reduce duplication and overlapping of law enforcement responsibilities, training, and technical assistance among State law enforcement

- agencies and among other State agencies having law enforcement responsibility;
- (2) Examination of the salary grade of all State law enforcement agencies' officers and a determination of whether present salary grades are appropriate; and
 - (3) Determination of whether G.S. 114-13 should be changed to make sworn law enforcement agents of the State Bureau of Investigation exempt from G.S. 126-7 but subject to the same salary classifications, ranges, and longevity pay for services as are applicable to other State employees generally, and whether to increase the agents' salary in an amount corresponding to the increments between steps within the salary range established for the class to which the member's position is assigned by the State Personnel Commission, not to exceed the maximum of each applicable salary range.

The Commission may hire outside consultants, if necessary, to assist in its study. The Commission may make an interim report to the 1989 General Assembly, Regular Session 1990, and ~~may~~ shall make a final report to the House and Senate Appropriations Committees on Justice and Public Safety and to the 1991 General Assembly."

Sec. 8.2. There is allocated from funds appropriated to the General Assembly the sum of \$100,000 for the 1990-91 fiscal year to the Joint Legislative Commission on Governmental Operations for the completion of the work authorized by this Part.

PART IX.-----EFFECTIVE DATE

Sec. 9.1. Section 3.2 of this act is effective June 30, 1990. The remainder of this act is effective July 1, 1990.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 2016

CHAPTER 1079

AN ACT TO PROVIDE A BENEFIT TO FORMER SHERIFFS WHO WITHDREW THEIR SERVICE IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM PRIOR TO THE CREATION OF THE SHERIFFS' SUPPLEMENTAL PENSION FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-166.84 reads as rewritten:
" § 143-166.84. *Eligibility.*

(a) Each county sheriff who has retired from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan on and before June 30, 1986, and who has attained the age of 55 years and who has completed at least 10 years of eligible service as sheriff is entitled to receive a monthly pension under this Article, beginning July 1, 1986.

(al) Each county sheriff who withdrew any service standing to his credit in the Local Governmental Employees' Retirement System prior to July 1, 1986, and who has attained the age of 55 and who has completed at least 10 years of eligible service as sheriff is entitled to receive a monthly pension under this Article provided the sheriff is not eligible to receive any retirement benefit from any State or locally sponsored plan..

(b) Each eligible retired Sheriff as defined in subsection (a) of this section relating to age, service, and retirement status on January 1 of each calendar year shall be entitled to receive a monthly pension under this Article beginning with the month of January of the same calendar year."

Sec. 2. G.S. 143-166.85 reads as rewritten:

" § 143-166.85. *Benefits.*

(a) An eligible retired sheriff shall be entitled to and receive an annual pension benefit, payable in equal monthly installments, equal to one share for each full year of eligible service as sheriff multiplied by his total number of years of eligible service. The amount of each share shall be determined by dividing the total number of years of eligible service for all eligible retired sheriffs on December 31 of each calendar year into the amount to be disbursed as monthly pension payments in accordance with the provisions of G.S., 143-166.83(b). In no event however shall a monthly pension under this Article exceed an amount, which when added to a retired allowance at retirement from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan or to the amount he would have been eligible to receive if service had not been forfeited by the withdrawal of accumulated contributions, is greater than seventy-five percent (75%) of a sheriff's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate, to a maximum amount of one thousand dollars (\$1,000).

(b) All monthly pensions payable under this Article shall be paid on the last business day of each month.

(c) Monthly pensions payable under this Article will cease at the death of the pensioner and no payment will be made to any beneficiaries or to the decedent's estate.

(d) Monthly pensions payable under this Article will cease upon the full-time reemployment of a pensioner with an employer participating

in the Local Governmental Employees' Retirement System for as long as the pensioner is so reemployed.

(e) Pensions paid under the provisions of this Article shall be exempt from North Carolina income tax.

(f) Nothing contained in this Article shall preclude or in any way affect the benefits that a pensioner may be entitled to from any state, federal or private pension, retirement or other deferred compensation plan."

Sec. 3. This act shall become effective August 1, 1990.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 1994

CHAPTER 1080

AN ACT TO ALLOW CERTAIN CONVERSIONS FROM SERVICE TO DISABILITY RETIREMENT IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 128-27(c) reads as rewritten:

"(c) Disability Retirement Benefits. -- Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement."

Sec. 2. This act is effective October 1, 1990.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.B. 267

CHAPTER 1081

AN ACT TO PROVIDE THAT IT IS A FELONY OFFENSE FOR A PERSON EIGHTEEN YEARS OF AGE OR OLDER TO EMPLOY A MINOR TO COMMIT A DRUG VIOLATION, TO PROVIDE THAT A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO HIRES A MINOR TO COMMIT A DRUG VIOLATION IS CIVILLY LIABLE FOR DAMAGES FOR DRUG ADDICTION PROXIMATELY CAUSED BY THE VIOLATION, TO INCREASE THE SENTENCE FOR THE ILLEGAL SALE OR DELIVERY OF DRUGS TO A MINOR OR A PREGNANT WOMAN, AND TO PROVIDE THAT A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO COMMITS A DRUG OFFENSE ON SCHOOL PROPERTY OR WITHIN 300 FEET OF THE BOUNDARY OF A SCHOOL IS GUILTY OF A CLASS E FELONY.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 90 of the General Statutes is amended by adding the following new section to read:

" § 90-95.4. Employing minor to commit a drug law violation.

(a) A person who is at least 18 years old but less than 21 years old who hires a minor to violate G.S. 90-95(a)(1) shall be guilty of a felony. An offense under this subsection shall be punishable as a felony that is one class more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired.

(b) A person 21 years of age or older who hires a minor to violate G.S. 90-95(a)(1) shall be guilty of a felony. An offense under this subsection shall be punishable as a felony that is two classes more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired.

(c) Mistake of Age. Mistake of age is not a defense to a prosecution under this section.

(d) The term 'minor' as used in this section is defined as an individual who is less than 18 years of age."

Sec. 2. G.S. 90-95(e) reads as rewritten:

"(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1),(2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than two years, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon;

(4) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than six months, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars (\$2,000), or both in the discretion of the court;

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age or a pregnant female shall be punished as a Class E ~~felon~~ felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a

defense that the defendant did not know that the recipient was pregnant;

- (6) For the purpose of increasing punishment, previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial;
- (7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars (\$500.00), or both in the discretion of the ~~court,~~ court;
- (8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). A person sentenced under this subdivision must serve a mandatory term of imprisonment of no less than two years, notwithstanding the provisions of G.S. 90-95(h)(5) or any other law. The sentencing judge may not suspend the mandatory two-year term of imprisonment or place the person on probation for the mandatory two-year term of imprisonment. During that time the prisoner is not eligible for early parole or early release."

Sec. 3. Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-95.5. Civil liability - employing a minor to commit a drug offense.

A person 21 years of age or older, who hires or employs a person under 18 years of age to commit a violation of G.S. 90-95 is liable in a civil action for damages for drug addiction proximately caused by the violation. The doctrines of contributory negligence and assumption of risk are no defense to liability under this section."

Sec. 4. This act shall become effective October 1, 1990. This act shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.B. 1631

CHAPTER 1082

AN ACT TO REQUIRE RESIDENT INSPECTORS AT COMMERCIAL HAZARDOUS WASTE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-295.02. Resident inspectors required at commercial hazardous waste facilities; recovery of costs for same.

(a) The Division shall employ full-time resident inspectors for each commercial hazardous waste facility located within the State. Such inspectors shall be employed and assigned so that at least one inspector is on duty at all times during which any component of the facility is in operation, is undergoing any maintenance or repair, or is undergoing any test or calibration. Resident inspectors shall be assigned to commercial hazardous waste management facilities so as to protect the public health and the environment, to monitor all aspects of the operation of such facilities, and to assure compliance with all laws and rules administered by the Division and by any other division of the Department. Such inspectors may also enforce laws or rules administered by any other agency of the State pursuant to an appropriate memorandum of agreement entered into by the Secretary and the chief administrative officer of such agency. The Division may assign additional resident inspectors to a facility depending upon the quantity and toxicity of waste managed at a facility, diversity of types of waste managed at the facility, complexity of management technologies utilized at the facility, the range of components which are included at the facility, operating history of the facility, and other factors relative to the need for on-site inspection and enforcement capabilities. The Division, in consultation with other divisions of the Department, shall define the duties of each resident inspector and shall determine whether additional resident inspectors are needed at a particular facility to meet the purposes of this section.

(b) The Division shall establish requirements pertaining to education, experience, and training for resident inspectors so as to assure that such inspectors are fully qualified to serve the purposes of this section. The Division shall provide its resident inspectors with such training, equipment, facilities, and supplies as may be necessary to fulfill the purposes of this section.

(c) As a condition of its permit, the owner or operator of each commercial hazardous waste facility located within the State shall provide and maintain such appropriate and secure offices and laboratory facilities as the Department may require for the use of the resident inspectors required by this section.

(d) Resident inspectors assigned to a commercial hazardous waste facility shall have unrestricted access to all operational areas of such facility at all times. For the protection of resident inspectors and the public, the provisions of G.S. 143-215.107(a)(7) and G.S. 143-215.107(f) shall not apply to commercial hazardous waste facilities to which a resident inspector is assigned.

(e) No commercial hazardous waste facility shall be operated, undergo any maintenance or repair, or undergo any testing or calibration unless an inspector employed by the Division is present at the facility.

(f) The requirements of this section are intended to enhance the ability of the Department to protect the public health and the environment by providing the Department with the authority and resources necessary to maintain a rigorous inspection and enforcement program at commercial hazardous waste management facilities. The requirements of this section are intended to be supplementary to other requirements imposed on hazardous waste facilities. This section shall not be construed to relieve either the owner or the operator of any such facility or the Department from any other requirement of law or to require any unnecessary duplication of reporting or monitoring requirements.

(g) For the purpose of enforcing the laws and rules enacted or adopted for the protection of the public health and the environment, resident inspectors employed pursuant to this section may be commissioned as special peace officers as provided in G.S. 113-28.1. The provisions of Article 1A of Chapter 113 of the General Statutes shall apply to resident inspectors commissioned as special peace officers pursuant to this subsection.

(h) The Department shall determine the full cost of the employment and assignment of resident inspectors at each commercial hazardous waste facility located within the State. Such costs shall include, but are not limited to, costs incurred for salaries, benefits, travel, training, equipment, supplies, telecommunication and data transmission, offices and other facilities other than those provided by the owner or operator, and administrative expenses. The Department shall establish and revise as necessary a schedule of fees to be assessed on the users of each such facility to recover the actual cost of the resident inspector program at that facility. The operator of each such facility shall serve as the collection agent for such fees, shall

account to the Department on a monthly basis for all fees collected, and shall deposit with the Department all funds collected pursuant to this section within 15 days following the last day of the month in which such fees are collected.

(i) A resident inspector shall be assigned to a commercial hazardous waste facility for a maximum of 12 consecutive months or 18 months in a 24-month period. A resident inspector who has been assigned to a commercial hazardous waste facility for the maximum period allowed by this subsection shall not be reassigned to that facility within 12 months of the time he was previously assigned to that facility. For purposes of this subsection, 'commercial hazardous waste facility' means that facility and any other commercial hazardous facility which is operated by the same business entity or by a parent, subsidiary, or affiliate of that business entity. As used in this subsection, the words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition).

(j) The Commission may adopt rules establishing reasonable times and frequencies for the presence of a resident inspector on less than a full-time basis at special purpose commercial hazardous waste facilities which manage limited quantities of hazardous waste. Rules providing for resident inspectors on less than a full-time basis shall be based on such factors as the smallness of the facility, the type of treatment being performed, the nature and volume of waste being treated, the uniformity, similarity, or lack of diversity of the waste streams, the predictability of the nature of the waste streams and their treatability, the fact that reclamation is being performed at the facility, and the compliance history of the facility and its operator."

Sec. 2. The Department of Environment, Health, and Natural Resources shall report quarterly to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission beginning 1 April 1991 on the implementation of the resident inspectors program. The receipts and expenditures provided for by this act shall appear as a separate expansion budget request for the 1991-93 biennium.

Sec. 3. This act shall become effective 1 January 1991 as to the assessment and collection of fees and shall become effective 1 March 1991 as to all other provisions.

In the General Assembly read three times and ratified this the 28th day of July, 1990.



RESOLUTIONS

H.J.R. 1

RESOLUTION 35

A JOINT RESOLUTION EXTENDING THE DEADLINE FOR REQUESTING, FILING FOR INTRODUCTION, AND INTRODUCTION OF CERTAIN BILLS.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. Section 1(1) of Resolution 34, Session Laws of 1989, reads as rewritten:

"(1) Bills directly affecting the State budget for fiscal year 1990-91, provided that no appropriations or finance bill may be filed for introduction in the Senate or introduced in the House of Representatives after ~~Tuesday, May 29~~ Thursday, May 31, 1990, provided that any such measure submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. on that date and filed for introduction in the Senate or introduced in the House of Representatives by 5:00 p.m. on ~~Thursday, May 31, Tuesday, June 5, 1990~~, shall be treated as if it had met the deadlines established by this subdivision."

Sec. 2. Section 1(3) of Resolution 34, Session Laws of 1989, reads as rewritten:

"(3) Bills implementing the recommendations of study commissions authorized or directed to report to the 1990 Session. Any bills authorized by this subdivision must be filed for introduction in the Senate or introduced in the House of Representatives no later than ~~5:00~~ 3:00 p.m. on ~~Wednesday, May 30, Friday, June 1, 1990~~."

Sec. 3. Section 1(4) of Resolution 34, Session Laws of 1989, reads as rewritten:

"(4) Any local bill filed for introduction in the Senate or introduced in the House of Representatives by 5:00 p.m. on ~~Tuesday, May 29~~ Thursday, May 31, 1990, and accompanied by a certificate signed by the principal sponsor stating that no public hearing will be required or asked for by a member on the bill, the bill is noncontroversial, and the bill is approved for introduction by each member of the Senate and House of Representatives whose district includes the area to which the bill applies."

Resolutions — 1989

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of May, 1990.

H.J.R. 2098

RESOLUTION 36

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JOHN KNOX MCNEILL, JR., FORMER MAYOR OF THE CITY OF RAEFORD, AND RECOGNIZING THE CELEBRATION OF NATIONAL TURKEY LOVERS' MONTH IN HIS HONOR.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JOHN KNOX MCNEILL, JR., FORMER MAYOR OF THE CITY OF RAEFORD."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1990.

S.J.R. 1377

RESOLUTION 37

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF FRED MOORE MILLS, JR.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF FRED MOORE MILLS, JR."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1990.

H.J.R. 2053

RESOLUTION 38

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF

Resolutions — 1989

HERBERT CLIFTON BLUE, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF HERBERT CLIFTON BLUE, FORMER MEMBER OF THE GENERAL ASSEMBLY."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1990.

H.J.R. 2174

RESOLUTION 39

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT NOTICE OF LIENS FOR THE COST AND DAMAGES PAYABLE TO THE UNITED STATES FOR THE CLEANUP OF ANY SITE COVERED BY CERCLA/SARA BE FILED IN THE OFFICE OF THE CLERK OF SUPERIOR COURT OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT NOTICE OF LIENS FOR THE COST AND DAMAGES PAYABLE TO THE UNITED STATES FOR THE CLEANUP OF ANY SITE COVERED BY CERCLA/SARA BE FILED IN THE OFFICE OF THE CLERK OF SUPERIOR COURT OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1990.

H.J.R. 2177

RESOLUTION 40

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO INCREASE THE MAXIMUM FINE FOR PARKING IN A HANDICAPPED PARKING SPACE.

Be it resolved by the House of Representatives, the Senate concurring:

Resolutions — 1989

Section 1. The 1989 General Assembly, Regular Session 1990, may consider: "A BILL TO BE ENTITLED AN ACT TO INCREASE THE MAXIMUM FINE FOR PARKING IN A HANDICAPPED PARKING SPACE."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1990.

H.J.R. 2230

RESOLUTION 41

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CREATION OF COUNTY RECREATION AND SECURITY SERVICE DISTRICTS.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CREATION OF COUNTY RECREATION AND SECURITY SERVICE DISTRICTS."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1990.

S.J.R. 1498

RESOLUTION 42

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO MAKE RELEASING OF MOTOR VEHICLES UNLAWFUL.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider: "A BILL TO BE ENTITLED AN ACT TO MAKE RELEASING OF MOTOR VEHICLES UNLAWFUL."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1990.

S.J.R. 1605

RESOLUTION 43

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A JOINT

Resolutions — 1989

RESOLUTION INVITING THE GOVERNOR TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES ON THURSDAY, JUNE 21, 1990.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED A JOINT RESOLUTION INVITING THE GOVERNOR TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES ON THURSDAY, JUNE 21, 1990."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1990.

S.J.R. 1608

RESOLUTION 44

A JOINT RESOLUTION INVITING THE GOVERNOR TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES ON THURSDAY, JUNE 21, 1990.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. A committee of four Senators and four Representatives shall be appointed by the presiding officers of the respective houses to invite His Excellency, Governor James G. Martin to address a joint session of the Senate and House of Representatives in the Hall of the House of Representatives at 2:15 p.m., Thursday, June 21, 1990.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1990.

H.J.R. 2194

RESOLUTION 45

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF SAMUEL BENJAMIN FRINK, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF SAMUEL BENJAMIN FRINK, FORMER MEMBER OF THE GENERAL ASSEMBLY."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1990.

H.J.R. 2386

RESOLUTION 46

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JOHN KNOX MCNEILL, JR., FORMER MAYOR OF THE CITY OF RAEFORD, AND RECOGNIZING THE CELEBRATION OF NATIONAL TURKEY LOVERS' MONTH IN HIS HONOR.

Whereas, John K. McNeill, Jr., was born on August 25, 1920, in Hoke County, North Carolina; and

Whereas, John K. McNeill, Jr., was a graduate of Louisburg College; and

Whereas, John K. McNeill, Jr., faithfully served the citizens of the City of Raeford as city councilman for 16 years, and as mayor for the last 21 years; and

Whereas, Mayor McNeill served the State of North Carolina as a planner with the Department of Natural Resources and Community Development for seventeen years; and

Whereas, throughout the course of Mayor McNeill's long career of public service, the City of Raeford experienced unprecedented growth; and

Whereas, Mayor McNeill's leadership resulted in water and sewer improvements necessary to recruit what have become the four main industries in Raeford: Burlington Industries, Faberge, Spanco, and House of Raeford; and

Whereas, Mayor McNeill died on January 14, 1990, and is survived by his wife, Ruth, his sons Steve, Jeff, and John K. McNeill III, his daughter Lynn, four brothers, and eight grandchildren; and

Whereas, one aspect of Mayor McNeill's diligent leadership was his enthusiastic support of the North Carolina Turkey Festival held annually in the City of Raeford; and

Whereas, the City of Raeford is the home of Wyatt G. Upchurch, President of the National Turkey Federation, who also serves as Chairman of the Hoke County Board of County Commissioners; and

Whereas, North Carolina is now the leading turkey-producing State in the nation, having produced over 50 million turkeys in 1989; and

Whereas, the National Turkey Federation has declared June 1990, to be the first annual National Turkey Lovers' Month;

Resolutions — 1989

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly of North Carolina wishes to honor the life and memory of John Knox McNeill, Jr., and expresses the gratitude and appreciation of both the City of Raeford and the State of North Carolina for his life and service to Raeford and to North Carolina.

Sec. 2. The General Assembly of North Carolina wishes to recognize Mr. McNeill's contributions to the development of the turkey industry in North Carolina, and to recognize the vital role of that industry in this State, during this first annual National Turkey Lovers' Month.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of John Knox McNeill, Jr., to the City of Raeford, and to the National Turkey Federation.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1990.

S.J.R. 1607

RESOLUTION 47

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE LICENSURE OF CREMATORY OPERATORS AND TO ESTABLISH THE CREMATORY AUTHORITY WITHIN THE BOARD OF MORTUARY SCIENCE.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE LICENSURE OF CREMATORY OPERATORS AND TO ESTABLISH THE CREMATORY AUTHORITY WITHIN THE BOARD OF MORTUARY SCIENCE."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1990.

S.J.R. 1436

RESOLUTION 48

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE GOVERNING

Resolutions — 1989

BODY OF A TAXING UNIT MAY DELAY THE ACCRUAL OF INTEREST ON CERTAIN UNPAID PROPERTY TAXES.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE GOVERNING BODY OF A TAXING UNIT MAY DELAY THE ACCRUAL OF INTEREST ON CERTAIN UNPAID PROPERTY TAXES."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

S.J.R. 1560

RESOLUTION 49

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO AMEND THE EXCEPTIONAL CHILDREN'S APPEALS PROCESS, TO PRESERVE FEDERAL FUNDS, AND TO SAVE THE STATE REPLACEMENT FUNDS.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO AMEND THE EXCEPTIONAL CHILDREN'S APPEALS PROCESS, TO PRESERVE FEDERAL FUNDS, AND TO SAVE THE STATE REPLACEMENT FUNDS."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.J.R. 2096

RESOLUTION 50

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO LIMIT TO FOUR YEARS SERVICE OF THE SPEAKER AND SPEAKER PRO TEMPORE OF THE HOUSE OF REPRESENTATIVES.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO LIMIT TO FOUR YEARS SERVICE OF THE SPEAKER AND SPEAKER PRO TEMPORE OF THE HOUSE OF REPRESENTATIVES."

Resolutions — 1989

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.J.R. 2240

RESOLUTION 51

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO EXTEND TO TWO YEARS THE TIME PERIOD FOR WHICH VICTIMS TEN YEARS OLD OR YOUNGER MAY RECEIVE COMPENSATION FOR ECONOMIC LOSS FROM THE VICTIMS COMPENSATION FUND.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO EXTEND TO TWO YEARS THE TIME PERIOD FOR WHICH VICTIMS TEN YEARS OLD OR YOUNGER MAY RECEIVE COMPENSATION FOR ECONOMIC LOSS FROM THE VICTIMS COMPENSATION FUND."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.J.R. 2303

RESOLUTION 52

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO EXPAND THE EGG PROMOTION TAX TO INCLUDE PROCESSED EGGS.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO EXPAND THE EGG PROMOTION TAX TO INCLUDE PROCESSED EGGS."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.J.R. 2361

RESOLUTION 53

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO RESTRICT PAROLE, GOOD TIME, AND GAIN TIME ELIGIBILITY FOR OFFENDERS WHO COMMIT FIRST AND SECOND DEGREE MURDER, AND TO PROVIDE NOTIFICATION OF PAROLE HEARINGS TO THE DISTRICT ATTORNEY, THE VICTIM'S FAMILY, AND THE ARRESTING LAW ENFORCEMENT AGENCY.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO RESTRICT PAROLE, GOOD TIME, AND GAIN TIME ELIGIBILITY FOR OFFENDERS WHO COMMIT FIRST AND SECOND DEGREE MURDER, AND TO PROVIDE NOTIFICATION OF PAROLE HEARINGS TO THE DISTRICT ATTORNEY, THE VICTIM'S FAMILY, AND THE ARRESTING LAW ENFORCEMENT AGENCY."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.J.R. 2384

RESOLUTION 54

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO CONSOLIDATE, CLARIFY, AND IMPROVE THE STATUTES RELATING TO RAILROAD/MOTOR VEHICLE SAFETY.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider: "A BILL TO BE ENTITLED AN ACT TO CONSOLIDATE, CLARIFY, AND IMPROVE THE STATUTES RELATING TO RAILROAD/MOTOR VEHICLE SAFETY."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.J.R. 2385

RESOLUTION 55

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE LICENSURE OF CREMATORY OPERATORS AND TO ESTABLISH THE CREMATORY AUTHORITY WITHIN THE BOARD OF MORTUARY SCIENCE.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE LICENSURE OF CREMATORY OPERATORS AND TO ESTABLISH THE CREMATORY AUTHORITY WITHIN THE BOARD OF MORTUARY SCIENCE."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.J.R. 2387

RESOLUTION 56

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO REPEAL THE SUNSET ON THE LIMITATION ON INSURANCE REQUIRED ON WATERSLIDES.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider: "A BILL TO BE ENTITLED AN ACT TO REPEAL THE SUNSET ON THE LIMITATION ON INSURANCE REQUIRED ON WATERSLIDES."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

H.J.R. 2388

RESOLUTION 57

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO DELAY THE EFFECTIVE DATE OF PRESUMPTIVE CHILD SUPPORT GUIDELINES PRESCRIBED BY THE CONFERENCE OF CHIEF DISTRICT COURT JUDGES.

Resolutions — 1989

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO DELAY THE EFFECTIVE DATE OF PRESUMPTIVE CHILD SUPPORT GUIDELINES PRESCRIBED BY THE CONFERENCE OF CHIEF DISTRICT COURT JUDGES."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1990.

S.J.R. 1610

RESOLUTION 58

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO ALTER THE MANNER FOR SELECTING DRAINAGE COMMISSIONERS AND TO PROVIDE NOTICE PRIOR TO ASSESSMENT.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO ALTER THE MANNER FOR SELECTING DRAINAGE COMMISSIONERS AND TO PROVIDE NOTICE PRIOR TO ASSESSMENT."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1990.

H.J.R. 2392

RESOLUTION 59

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF HERBERT CLIFTON BLUE, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Herbert Clifton "Cliff" Blue was born in Cumberland County on August 28, 1910, to John Patrick and Christian Stewart Blue; and

Whereas, Cliff Blue graduated from Vass-Lakeview High School in 1929; and

Whereas, Cliff Blue began a career in publishing in 1932 when he borrowed fifty dollars to establish a weekly newspaper called "The Captain" in Vass, North Carolina; and

Whereas, Cliff Blue consolidated "The Captain" with "The Sandhill Citizen" and moved it to Aberdeen in 1936; and

Resolutions — 1989

Whereas, Cliff Blue established "The Robbins Record" in Robbins, North Carolina in 1958; and

Whereas, Cliff Blue sold both newspapers in 1982 but continued to write a column for the combined paper known as "The Citizen-News-Record" and to serve as a consultant until 1987; and

Whereas, Cliff Blue was active in the North Carolina Press Association, serving as its director, president, and vice-president; and

Whereas, Cliff Blue served the people of Moore County and the State of North Carolina for nine terms in the House of Representatives beginning in 1947; and

Whereas, Cliff Blue was elected speaker of the House of Representatives in 1963; and

Whereas, Cliff Blue was responsible for the passage of the "Blue Bill" which prevented insurance companies from cancelling health, accident, and hospital coverage without a notice period; and

Whereas, Cliff Blue was a member of the Democratic Party but was described as a true statesman who was respected and admired by all of his colleagues; and

Whereas, when the need arose to extend secondary education, Cliff Blue played a major role in establishing the community college system in North Carolina and the Sandhills Community College in Moore County; and

Whereas, Cliff Blue was appointed to the Sandhills Community College Board of Trustees and served as the Chairman of the Board from 1963 to 1979 and was honored with a building named for him on the Sandhills Community College Campus; and

Whereas, Cliff Blue was an active participant in his church and community, serving as Sunday school superintendent, deacon, elder, and trustee in the Bethesda Presbyterian Church; as a Mason and member of the Aberdeen Lions Club, and as chairman of the March of Dimes in Moore County for ten years; and

Whereas, Cliff Blue died on March 10, 1990; and

Whereas, Cliff Blue leaves to mourn, his widow, Gala Nunnery Blue; his sons, H. Clifton Blue, Jr., John Blue; and his daughters, Patsy B. Bailey, Elizabeth B. Abrams; and

Whereas, Cliff Blue will be remembered as an outstanding editor, publisher, politician, leader, and family man;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly expresses its deep appreciation for the life and accomplishments of H. Clifton Blue and for the great service to the State and Moore County.

Resolutions — 1989

Sec. 2. The General Assembly wishes to honor the life and memory of Herbert Clifton Blue and expresses its sympathy to his family.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Herbert Clifton Blue.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1990.

H.J.R. 2396

RESOLUTION 60

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WILLIAM T. "BILLY" WATKINS.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WILLIAM T. 'BILLY' WATKINS."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1990.

S.J.R. 1438

RESOLUTION 61

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF SAMUEL BENJAMIN FRINK, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF SAMUEL BENJAMIN FRINK, FORMER MEMBER OF THE GENERAL ASSEMBLY."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

S.J.R. 1604

RESOLUTION 62

Resolutions — 1989

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO PROVIDE THE RULES AND PROCEDURES FOR MUNICIPAL REDISTRICTING IN 1991.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO PROVIDE THE RULES AND PROCEDURES FOR MUNICIPAL REDISTRICTING IN 1991."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

S.J.R. 1614

RESOLUTION 63

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE PROBATIONARY TIME BETWEEN AN INTERLOCUTORY DECREE AND FINAL ADOPTION ORDER MAY BE THE SAME FOR PRIVATE ADOPTIONS AS THOSE ARRANGED BY SOCIAL SERVICES OR A LICENSED CHILD-PLACING AGENCY.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE PROBATIONARY TIME BETWEEN AN INTERLOCUTORY DECREE AND FINAL ADOPTION ORDER MAY BE THE SAME FOR PRIVATE ADOPTIONS AS THOSE ARRANGED BY SOCIAL SERVICES OR A LICENSED CHILD-PLACING AGENCY."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

H.J.R. 2024

RESOLUTION 64

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ELISHA MITCHELL ON THE SEVENTY-FIFTH ANNIVERSARY OF MOUNT MITCHELL STATE PARK AND COMMEMORATING THE ESTABLISHMENT OF THE FIRST STATE PARK IN NORTH CAROLINA.

Resolutions — 1989

Whereas, Dr. Elisha Mitchell was a pioneer scientist of the south and a professor at the University of North Carolina at Chapel Hill; and

Whereas, Mount Mitchell was named for Dr. Elisha Mitchell who measured the height of Mount Mitchell in 1835, and discovered for the first time that it was the highest land in America east of the Mississippi River; and

Whereas, the reasons for establishing Mount Mitchell as the first North Carolina State Park were cited in Chapter 76 of the Public Laws of 1915:

"Whereas, the summit of Mount Mitchell in Yancey County is the greatest altitude east of the Rocky Mountains; and

Whereas, the headwaters of many of the important streams of the State are at, or near the said summit, and the forest is being cleared, which tends to damage and injure the streams flowing through the said State from the mountains to the Atlantic Ocean; and

Whereas, it is deemed desirable that this beautiful and elevated spot shall be acquired and permanently dedicated as a State park for the use of the entire State seeking health and recreation; and

Whereas, unless the said land is acquired by the State at this time, the cost of acquiring it at a later date will be greatly increased and the watercourses may be damaged, and the beauty and scenery destroyed by removing the growth therefrom, and irreparable damage accrue;" and

Whereas, millions of visitors to Mount Mitchell since 1915 have enjoyed its beauty; and

Whereas, the General Assembly of 1987-88, affirming the wisdom of their predecessors, enacted the State Parks Act which recognized that "the State of North Carolina offers unique archaeological, geologic, biologic, scenic, and recreational resources. These resources are part of the heritage of the people of the State. The heritage of a people should be preserved and managed by those people for their use and for the use of their visitors and descendants";

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the life and memory of Dr. Elisha Mitchell on the 75th anniversary of Mount Mitchell State Park and commemorates the establishment of the first State Park in North Carolina.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1990.

S.J.R. 1430

RESOLUTION 65

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT NO INSURANCE POINTS AND NO SURCHARGES MAY BE ASSESSED FOR CERTAIN SPEEDING OFFENSES OVER SIXTY-FIVE MILES PER HOUR.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider: "A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT NO INSURANCE POINTS AND NO SURCHARGES MAY BE ASSESSED FOR CERTAIN SPEEDING OFFENSES OVER SIXTY-FIVE MILES PER HOUR."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

S.J.R. 1619

RESOLUTION 66

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF FRED MOORE MILLS, JR.

Whereas, Fred Moore "Fritz" Mills, Jr., was born in Wadesboro, North Carolina, on March 26, 1922; and

Whereas, Fritz Mills was educated in the public school system, served in the United States Army in the European Theater of Operations from 1942 until 1945, and graduated with a degree in commerce in 1950 from the University of North Carolina at Chapel Hill; and

Whereas, Fritz Mills operated successful businesses in peach farming, timber, gravel production, and real estate; and

Whereas, Fritz Mills was a deacon in his church and a member of the American Legion, the Veterans of Foreign Wars, and the Loyal Order of Moose; and

Whereas, Fritz Mills believed intensely in public service and was dedicated to the improvement of the State; and

Whereas, Fritz Mills served with distinction in the North Carolina Senate in 1963 and 1965 and in the North Carolina House of Representatives in 1967 and 1969; and

Whereas, Fritz Mills served as the Governor's liaison to the General Assembly in 1971 and, reflecting his lifelong interest in

education, was instrumental in university issues, as well as in the reorganization of the State's transportation agencies; and

Whereas, Fritz Mills became the State's first Secretary of Transportation in 1971; and

Whereas, Fritz Mills in 1973 became legislative consultant to several organizations including ElectriCities of North Carolina, where he later served as acting general manager and for years as director of governmental affairs; and

Whereas, Fritz Mills' knowledge of utility matters and his devotion to the cause of public power in North Carolina proved of great and lasting value to the municipalities he served and to the members of the General Assembly who benefitted from his counsel; and

Whereas, no words can effectively summarize and capture the essence of Fritz Mills; and

Whereas, Fritz Mills' intelligence and knowledge of government made him a force on any issue; and

Whereas, amid the rigors of public service, Fritz Mills retained a sense of humor and of self-deprecation; and

Whereas, Fritz Mills evaluated opinions on their merits more than on their source; and

Whereas, during changing times, Fritz Mills remained so contemporary a man that he was immersed in each new issue and development; and

Whereas, Fritz Mills reached out to others to help with personal concerns; and

Whereas, Fritz Mills' first priority was always his family: his wife, Frances Davis Mills; and his sons, Fred Moore Mills III and James Fetzer Mills; and

Whereas, the General Assembly wishes not only to honor the accomplishments and memory of Fritz Mills, but also to express the sentiment that the "The Building", as he called this place, is the less because of his absence;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly of North Carolina recognizes the stature and accomplishments of Fred Moore Mills, Jr., and conveys the appreciation of North Carolina for his life and service towards progress in the State.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Fred Moore Mills, Jr.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

H.J.R. 2408

RESOLUTION 67

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WILLIAM T. "BILLY" WATKINS.

Whereas, William T. "Billy" Watkins was born in Granville County, July 1, 1921, to John Stradley and Belle (Norwood) Watkins; and

Whereas, William T. "Billy" Watkins was educated at Oak Hill High School, Mars Hill Junior College, Wake Forest College, and Wake Forest Law School; and

Whereas, William T. "Billy" Watkins practiced law in the Town of Oxford and followed his father's and brother's footsteps by serving in the North Carolina General Assembly; and

Whereas, William T. "Billy" Watkins served the people of his district and of the State in the House of Representatives, from 1969 until his death in 1989, as a dedicated and faithful public servant; and

Whereas, William T. "Billy" Watkins held many key posts in the House of Representatives including Speaker Pro Tempore from 1973 through 1974, Chairman of the Base Budget Appropriations Committee from 1975 through 1976, and Chairman of the Expansion Budget Appropriations Committee from 1981 through 1988; and

Whereas, William T. "Billy" Watkins was an accomplished orator who often coupled dry wit with wisdom to persuade his fellow legislators of the rightness of his positions; and

Whereas, William T. "Billy" Watkins loved a good debate and, regardless of the intensity of the disagreement, he always emerged with the respect of his opponent; and

Whereas, William T. "Billy" Watkins had an extraordinary intellect, a tireless commitment to good government, and the crusading spirit to fight for what he believed in; and

Whereas, William T. "Billy" Watkins had a remarkable ability to fashion policies that were practical, affordable, and good for the State, to shepherd those policies through the General Assembly, and to make sure government officials implemented them; and

Whereas, William T. "Billy" Watkins had a real genius for government that he used to further a philosophy that incorporated fairness and fiscal responsibility; and

Whereas, William T. "Billy" Watkins was in the forefront of all legislation to improve the university system, the community college

Resolutions — 1989

system, and the public schools, and the Basic Education Program was one of his proudest accomplishments; and

Whereas, William T. "Billy" Watkins was a voice for the poor, the aged, children, and the common man, and for common sense against bureaucracy and special interests; and

Whereas, William T. "Billy" Watkins was a caring, kind person who spoke with pride and devotion of his wife, Louie; his children, Alma Marie and Annabelle; and his grandchildren, Mart, Bridgette, Watkins, and Aleighia; and

Whereas, in the untimely death of William T. "Billy" Watkins, the Democratic Party, Granville County, the district he served, and the citizens of the entire State lost a good friend and an admired and respected man;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly of North Carolina honors the life and memory of William T. "Billy" Watkins and expresses its deepest appreciation for the leadership, humor, dedication, and vision he provided to the State.

Sec. 2. The General Assembly expresses its deepest sympathy to William T. "Billy" Watkins' widow, his daughters, his grandchildren, and his friends, for the loss of a beloved husband, father, grandfather, and friend.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of William T. "Billy" Watkins.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

S.J.R. 1613

RESOLUTION 68

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO AUTHORIZE ABC ELECTION IN CERTAIN CITIES LOCATED IN TWO COUNTIES.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider: "A BILL TO BE ENTITLED AN ACT TO AUTHORIZE ABC ELECTION IN CERTAIN CITIES LOCATED IN TWO COUNTIES."

Sec. 2. This resolution is effective upon ratification.

Resolutions — 1989

In the General Assembly read three times and ratified this the 16th day of July, 1990.

S.J.R. 1621

RESOLUTION 69

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF SAMUEL BENJAMIN FRINK, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Samuel Benjamin Frink, affectionately known as Bunn, was born on October 2, 1899, in Shallotte, North Carolina, to the late D.S. and Martha Gore Frink; and

Whereas, Bunn Frink attended Brunswick County High School and Motte Business College in Wilmington; he attained his law license not by going to law school but by reading law under Professor Lockhart at Trinity College which later became Duke University; and

Whereas, Bunn Frink enlisted in the United States Navy on May 1, 1917, and served during World War I and World War II, including 18 months of service in the United States Coast Guard; and

Whereas, Bunn Frink served as Captain of the Port of Wilmington and was discharged from the service in 1946 as lieutenant, senior grade; and

Whereas, Bunn Frink practiced law over 60 years, founding Frink, Foy, Gainey & Yount law firm, serving as Brunswick County's attorney for 16 years, serving as attorney for the Brunswick County Board of Education, and serving as Clerk of Superior Court in Brunswick County from 1930 until 1934; and

Whereas, Bunn Frink served the people of southeastern North Carolina and the State of North Carolina for six terms in the General Assembly, serving in the Senate in 1935, 1939, 1951, 1959, and 1971 and serving in the House of Representatives in 1961; and

Whereas, Bunn Frink had strong ties to his community, serving as a member of the J.A. Doshier Memorial Hospital Board of Trustees in Southport; as a member of the Board of Directors for Security Savings and Loan; and as a member of the Board of Stewards of Trinity Methodist Church in Southport, where he was a member; and

Whereas, Bunn Frink was a member of the State Ports Authority from July 1945 until January 1949; and

Whereas, Bunn Frink died on August 23, 1989, at Grand Strand General Hospital in Myrtle Beach, South Carolina; and

Whereas, Bunn Frink is survived by his wife Marguerite Weathers Frink; daughters Marion F. Adams and Joanne Herring; sisters Elneta F. Cox, Sue Frink, Gertie Mooney, Carrie Smith, and Frances Martin; and five grandchildren and a great-grandson;

Resolutions — 1989

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly of North Carolina wishes to honor the life and memory of Samuel Benjamin (Bunn) Frink by expressing its appreciation for his life and accomplishments and for the great service he gave to the State and the citizens of southeastern North Carolina.

Sec. 2. The General Assembly of North Carolina wishes to express its deepest sympathy to the family of Samuel Benjamin (Bunn) Frink for the loss of its distinguished member.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Samuel Benjamin (Bunn) Frink.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

H.J.R. 2409

RESOLUTION 70

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO REQUIRE PEOPLE TO BE LICENSED TO PRACTICE ELECTROLOGY.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO REQUIRE PEOPLE TO BE LICENSED TO PRACTICE ELECTROLOGY."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

S.J.R. 1625

RESOLUTION 71

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO MAKE THE STATE INCOME TAX REFUND PERIOD THE SAME AS THE FEDERAL INCOME TAX REFUND PERIOD.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO MAKE THE STATE INCOME TAX REFUND PERIOD THE SAME AS THE FEDERAL INCOME TAX REFUND PERIOD."

Resolutions — 1989

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

S.J.R. 1629

RESOLUTION 72

A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT OF THE GENERAL ASSEMBLY.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Senate and House of Representatives constituting the General Assembly of 1989 do adjourn, on Friday, July 20, 1990, at 6:00 P.M., to reconvene on Thursday, July 26, 1990, at 3:30 P.M.

Sec. 2. In accordance with G.S. 120-3.1(b), members shall not be entitled to subsistence and travel allowances during the intervening days of adjournment.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

S.J.R. 1611

RESOLUTION 73

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO REQUIRE RESIDENT INSPECTORS AT COMMERCIAL HAZARDOUS WASTE FACILITIES.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A BILL TO BE ENTITLED AN ACT TO REQUIRE RESIDENT INSPECTORS AT COMMERCIAL HAZARDOUS WASTE FACILITIES."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

S.J.R. 1630

RESOLUTION 74

A JOINT RESOLUTION AUTHORIZING THE 1989 GENERAL ASSEMBLY, 1990 SESSION, TO CONSIDER A JOINT RESOLUTION STATING THE LONG-TERM GENERAL FUND BUDGET AVAILABILITY OUTLOOK AND REQUESTING THAT THE STATE BUDGET PROCESS BE MODIFIED TO

PROVIDE A LONG-TERM ANALYSIS OF STATE BUDGET DECISIONS.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1989 General Assembly, Regular Session 1990, may consider "A JOINT RESOLUTION STATING THE LONG-TERM GENERAL FUND BUDGET AVAILABILITY OUTLOOK AND REQUESTING THAT THE STATE BUDGET PROCESS BE MODIFIED TO PROVIDE A LONG-TERM ANALYSIS OF STATE BUDGET DECISIONS."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

H.J.R. 2412

RESOLUTION 75

A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT SINE DIE OF THE GENERAL ASSEMBLY.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Senate and House of Representatives constituting the General Assembly of 1989 do adjourn *sine die*, on Saturday, July 28, 1990, at 2:00 p.m. The 1991 Regular Session shall convene at 12:00 noon on the date set by law.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

S.J.R. 1632

RESOLUTION 76

A JOINT RESOLUTION STATING THE LONG-TERM GENERAL FUND BUDGET AVAILABILITY OUTLOOK AND REQUESTING THAT THE STATE BUDGET PROCESS BE MODIFIED TO PROVIDE A LONG-TERM ANALYSIS OF STATE BUDGET DECISIONS.

Whereas,

(1) The agencies that evaluate the bonds of the State of North Carolina and its political subdivisions have encouraged State officials to take the steps necessary to resolve the long-term structural shortfall in the General Fund budget;

(2) Recognition of the magnitude of the shortfall is a first step in stimulating discussions by the Governor and members of the General Assembly on ways to resolve the shortfall;

Resolutions — 1989

(3) Major increases in the General Fund current services budget due to federal legislative and judicial mandates are an unalterable fact of State budget making;

(4) The General Assembly remains committed to its initiatives to improve the quality of education services provided in the public schools, community colleges, and the university system;

(5) The General Assembly is committed to addressing the infrastructure and human services needs that will enable the State's economic development climate and quality of life to remain attractive;

(6) In order to preserve North Carolina's time-honored reputation for financial integrity, the State has:

- a. Adopted a formal "rainy-day fund" for the first time,
- b. Reduced through appropriations actions the size of the current services budget and extended the time frame for implementation of prior legislative initiatives so as to make the initiatives more achievable,
- c. Formalized the legislative/executive consensus revenue-estimating process,
- d. Authorized a major commission to develop recommendations for resolving the long-term General Fund shortfall,
- e. Taken actions effective with the beginning of the current fiscal year to keep expenditure flows in line with revenues and to identify further permanent budget reduction options, and
- f. Used State debt financing for financing prison construction to alleviate the fiscal pressures from funding long-term capital projects from current revenues;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly recognizes the following long-term condition of the General Fund Current Operations Budget, which is based on a consensus revenue estimate of the Office of State Budget and Management and the Fiscal Research Division and is the best current estimate of the cost of the current services budget, federal mandates, 1990 Session program expansion actions, and other factors leading to future expenditure demands:

GENERAL FUND CURRENT OPERATIONS BUDGET OUTLOOK				
(MILLION)				
	91-92	92-93	93-94	94-95
Revenues	\$8,029.0	\$8,619.4	\$9,257.9	\$9,936.7
Expenditures	8,513.7	9,225.1	10,053.2	10,761.4

Resolutions — 1989

Shortfall

\$ 484.7 \$ 605.7 \$ 795.3 \$ 824.7

The details underlying this outlook are contained in the July 27, 1990, analysis of the General Fund Current Operations Budget Outlook, which was distributed in the Senate and House of Representatives to explain this resolution.

Sec. 2. It is the intent of the General Assembly that future executive and legislative fiscal analysis of the General Fund availability outlook, State general obligations bond authorizations, and individual bills affecting General Fund revenues or expenditures encompass the projected impact for the upcoming four-year period. It is also the intent of the General Assembly that the analysis of proposed capital improvement projects funded from the General Fund contain the projected current operating costs for the useful life of the project.

Sec. 3. This resolution is effective upon ratification.

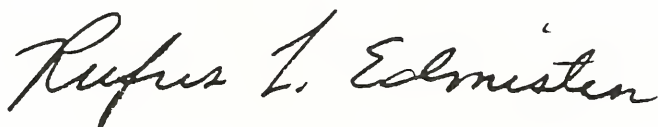
In the General Assembly read three times and ratified this the 28th day of July, 1990.

STATE OF NORTH CAROLINA

DEPARTMENT OF STATE,

RALEIGH, JULY 28, 1990

I, RUFUS L. EDMISTEN, Secretary of State of North Carolina, hereby certify that the foregoing volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the office of the Secretary of State.

A handwritten signature in black ink, reading "Rufus L. Edmisten". The signature is written in a cursive style with a large, prominent "R" and "E".

Secretary of State

APPENDIX

EXECUTIVE ORDERS OF GOVERNOR JAMES G. MARTIN

Title	Number
AMENDMENT TO EXECUTIVE ORDER NUMBER 80 NORTH CAROLINA DRUG CABINET	97
HURRICANE HUGO RELIEF	98
GOVERNOR'S COMMISSION ON REDUCTION OF INFANT MORTALITY	99
EXTENSION OF EXECUTIVE ORDER NUMBER 98	100
AMENDING EXECUTIVE ORDER NUMBER 55 EXTENDING EXPIRATION DATE OF EXECUTIVE ORDER NUMBER 55	101
AMENDMENT TO EXECUTIVE ORDER NUMBER 88 COLUMBUS VOYAGES QUINCENTENARY COMMISSION	102
EXTENSION OF EXECUTIVE ORDER NUMBER 100	103
AMENDING EXECUTIVE ORDER NUMBER 90	104
EXTENDING EXPIRATION DATE OF EXECUTIVE ORDER NUMBER 3	105
AMENDING EXECUTIVE ORDER NUMBER 66 EXTENDING EXPIRATION DATE OF EXECUTIVE ORDER NUMBER 66	106
NORTH CAROLINA GOVERNOR'S COMMISSION ON WORKFORCE PREPAREDNESS	107
REESTABLISHMENT OF NORTH CAROLINA DRUG CABINET AND RESCISSION OF EXECUTIVE ORDERS 80, 81, AND 97	108
THE NORTH CAROLINA SPORTS DEVELOPMENT COMMISSION	109
GOVERNOR'S ADVISORY COUNCIL ON INTERNATIONAL TRADE	110
AMENDMENT AND EXTENSION OF EXECUTIVE ORDER NUMBER 45	111
RESTRUCTURING AND REESTABLISHING GOVERNOR'S ADVISORY COMMISSION ON TRAVEL AND TOURISM	112

COMMITTEE ON GOVERNOR'S CONFERENCES ON LIBRARY AND INFORMATION SERVICES	113
BUDGET ADMINISTRATION	114
AMENDING EXECUTIVE ORDER NUMBER 92 ENTITLED <u>ESTABLISHING THE WESTERN NORTH CAROLINA ENVIRONMENTAL COMMISSION</u>	115
AMENDING AND EXTENDING EXECUTIVE ORDER NUMBER 78 GOVERNOR'S TASK FORCE ON INJURY PREVENTION	116
AMENDING EXECUTIVE ORDER NUMBER 108 TO INCLUDE THE SECRETARY OF THE DEPARTMENT OF REVENUE IN THE MEMBERSHIP OF THE NORTH CAROLINA DRUG CABINET	117
EXTENDING EXECUTIVE ORDER NUMBER 79 NORTH CAROLINA SMALL BUSINESS COUNCIL	118
ESTABLISHING THE NORTH CAROLINA QUALITY LEADERSHIP AWARDS COUNCIL	119
AN EXECUTIVE ORDER ESTABLISHING ADDITIONAL CRITERIA FOR ELIGIBILITY OF CERTAIN MEMBERS OF THE COASTAL RESOURCES COMMISSION	120
GOVERNOR'S MINORITY, FEMALE AND DISABLED-OWNED BUSINESSES CONSTRUCTION CONTRACTORS ADVISORY COMMITTEE	121
ESTABLISHING THE GOVERNOR'S COUNCIL OF FISCAL ADVISORS	122
UNIFORM FLOODPLAIN MANAGEMENT POLICY	123

State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 97
AMENDMENT TO EXECUTIVE ORDER NUMBER 80
NORTH CAROLINA DRUG CABINET

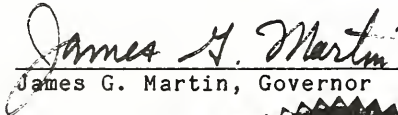
By authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 2 of Executive Order Number 80 entitled "North Carolina Drug Cabinet" is amended by adding to the membership of the Cabinet the Secretary of Environment, Health and Natural Resources.

All other sections and provisions of Executive Order Number 80 shall remain in effect.

This order shall be effective immediately and shall remain in effect until terminated.

Done in Raleigh, North Carolina, this the 26th day of September, 1989.


James G. Martin, Governor

ATTEST:


Rufus Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 98 HURRICANE HUGO RELIEF

WHEREAS, I have proclaimed that a State of disaster exists in certain areas of North Carolina due to the effects of Hurricane Hugo; and

WHEREAS, a State of emergency has been declared in the State of South Carolina and the Governor of South Carolina has requested that the State of North Carolina temporarily waive weight restrictions on the gross weight of trucks transporting trees and by-products from the disaster caused by Hurricane Hugo and weight and license requirements thereon; and

WHEREAS, pursuant to Chapter 166A, the North Carolina Emergency Management Act, and by the authority vested in me as Governor of the State of North Carolina by the Constitution and laws of this State, and with the concurrence of the Council of State; and

WHEREAS, for the purpose of relieving human suffering caused by Hurricane Hugo it is ORDERED;

Section 1: That for a period of time beginning immediately until 4 December 1989 the State of North Carolina under the supervision and direction of the Department of Transportation and Division of Motor Vehicles will waive weight restrictions on the gross weight of vehicles transporting trees and by-products coming out of the State of South Carolina subject to the following conditions:

- (1) Vehicle weight will not exceed the maximum gross vehicle weight criteria established by the manufacturer.
- (2) The vehicles will be allowed only on primary and interstate routes to be designated by the Department of Transportation.
- (3) The vehicles will, upon entering the State of North Carolina stop at the first available vehicle weight station and produce identification sufficient to establish that the load contained thereon is part of the Hurricane Hugo relief effort.

Section 2: The vehicle described above will be exempt from the vehicle licensing and tax requirements of N.C.G.S. 105, Subchapter 5, Article 36B.

Section 3: The North Carolina Department of Transportation shall enforce the conditions set forth in Section 1 and Section 2 in a manner in which would best accomplish the implementation of this rule without endangering the motorists on North Carolina highways.

This Order is effective immediately and shall remain in effect until December 4, 1989.

This the 3rd day of November 1989.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER 99 GOVERNOR'S COMMISSION ON REDUCTION OF INFANT MORTALITY

Whereas, the State of North Carolina has the highest infant mortality rate among the states; and

Whereas, the infant mortality rate increased from 11.6 deaths to 12.1 deaths per 1,000 live births between 1986 and 1987, a four and three-tenths percent (4.3%) increase; and

Whereas, the infant mortality rate increased from 12.1 deaths to 12.6 deaths per 1,000 live births between 1987 and 1988, a four and one-tenth percent (4.1%) increase; and

Whereas, babies who are born prematurely or weigh less than 5 1/2 pounds at birth are 40 times more likely to die within the first month of life as are normal weight babies; and

Whereas, the cost of intensive care for one low birth weight infant ranges from \$30,000 to several hundred thousand dollars in a neonatal intensive care nursery to save its life; and

Whereas, premature infants are at a high risk for long-term handicapping conditions including mental retardation, cerebral

palsy, and blindness, which often require continued support from tax dollars for their care; and

Whereas, the cost of intensive neonatal care for five low birth weight babies would pay for the prenatal care of 149 women; and

Whereas, in November 1988, two reports were released which outlined problems and made definitive recommendations concerning the problems of infant mortality and prenatal care, one report having been prepared by the North Carolina Department of Human Resources Infant Mortality Task Force and the second by the North Carolina Institute of Medicine's Task Force to Reduce Infant Mortality and Morbidity; and

Whereas, one of the high priority recommendations listed in both reports is the initiation of a coordinated effort among state and local agencies and the business community particularly to educate the public concerning prenatal care as well as other efforts to promote the birth of healthy babies and reduce infant mortality in the State of North Carolina; NOW, THEREFORE,

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. Establishment. I hereby establish the Governor's Commission on Reduction of Infant Mortality.

Section 2. Membership. The Commission shall consist of not less than 27 members. The Governor of North Carolina shall appoint at least 25 persons as members of the Commission. These 25 appointees shall be distributed as follows:

No. of AppointeesRepresenting

3	Organizations or associations described in Chapter 61 of the North Carolina General Statutes and qualified under Sec. 501(c)(3) of the Internal Revenue Code of 1986.
3	the various professions, businesses, and industries doing business in North Carolina
3	members of the general public
1	Public education
1	the North Carolina Nurses Association
1	the North Carolina Society of Public Health Educators
1	the North Carolina Association of Local Health Directors
1	the School of Public Health, University of North Carolina (Chapel Hill)
1	the North Carolina Academy of Family Physicians
1	the North Carolina Pediatric Society
1	the North Carolina Obstetrics and Gynecology Society
1	the North Carolina Hospital Association
1	the North Carolina Perinatal Association
1	N.C. Chapter, American College of Nurse - Midwives
1	other Health Care Provider Professions

In addition to the above members, the Governor shall seek recommendations from the following groups for the purpose of making the following appointments:

<u>No. of Appointees</u>	<u>Representing</u>
2	the North Carolina Institute of Medicine
2	the North Carolina Chapters of the March of Dimes Birth Defects Foundation

The Speaker of the House of Representatives of the North Carolina General Assembly shall appoint one member who shall be, at the time of appointment, a duly elected and serving member of the House of Representatives of the North Carolina General Assembly.

The President of the Senate of the North Carolina General Assembly shall appoint one member who shall be, at the time of appointment, a duly elected and serving member of the Senate of the North Carolina General Assembly.

Section 3. Chairmanship and Terms. The Governor shall designate from the membership a Chairperson and Vice-Chairperson of the Commission. Members totalling one-third (1/3) or less of the total membership of the Commission shall be appointed to initial terms of one (1) year each. Members totalling one-third (1/3) or less of the total membership of the Commission shall be appointed to initial terms of two (2) years each. The remaining members shall be appointed to initial terms of three (3) years each. After completion of these initial terms, all appointees

shall be appointed to terms of three (3) years each. Members may be reappointed for additional terms. The Governor shall designate the length of each members' initial term pursuant to this section. During their terms all members serve at the pleasure of the Governor. All vacancies shall be filled by the appointing authority for the remainder of the unexpired term.

Section 4. Meetings. The Commission shall meet at least once each calendar quarter and at other times as directed by the Governor or upon call by the Chairperson.

Section 5. Duties and Powers. The Commission shall perform such duties as assigned by the Governor. It shall have the following specific duties, powers and functions:

(1) Advise the Governor and the Secretary of the Department of Environment, Health and Natural Resources on measures necessary to reduce current rates of infant mortality and morbidity.

(2) Assess existing programs concerning pre-conceptional health of women through health and welfare of infants during the first year of life, including prenatal care, whether such programs be public or private. A primary goal of this assessment shall be the elimination of duplication and gaps in establishing effective, efficient delivery of services.

(3) Facilitate coordination of existing and/or proposed state and local programs relating to prenatal care and reduction of infant mortality and morbidity.

(4) Determine whether such existing programs as outlined above are in need of assistance in carrying out their purpose and to determine whether such programs in need of assistance would

effectively benefit from such assistance as the Commission, through its association with any private, non-profit corporation referred to in Section 6, is able to give.

(5) Promote programs among business and industry within the state which, if implemented and utilized by employees, would have a beneficial effect upon maternal and infant health.

Section 6. Public/Private Partnership. The Commission may, in its discretion, associate itself with and work in conjunction with a private, non-profit organization organized pursuant to the provisions of Chapter 55A of the North Carolina General Statutes (and for which tax exempt status under the Internal Revenue Code of 1986 and under the Revenue Laws of the State of North Carolina shall have been granted), which organization shall have as its purpose the futherance of the goals of this Order and the Commission. The Commission shall not seek funds from the State of North Carolina for appropriation to any entity referred to under this Section.

Section 7. Cooperation of State Agencies. All state agencies, departments, and officials shall cooperate with the Commission and provide such technical advice, information, and other assistance as the Commission shall request.

Section 8. Consultation with Existing Public Policy Groups. In carrying out its duties and functions the Commission shall consult with the Institute of Medicine and, in the discretion of the Commission, any other medical or public or private groups which have conducted studies or have expertise in the area of infant mortality in North Carolina.

Section 9. Administrative Support and Expenses. The administrative support for the Commission shall be provided by the Department of Environment, Health and Natural Resources.

Section 10. Annual Report. The Commission shall, promptly following the close of each calender year, submit an annual report of its activities for the preceding year to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives of the North Carolina General Assembly.

This Order is effective this the 13th day of December, 1989.


James G. Martin
Governor

ATTEST:


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 100 EXTENSION OF EXECUTIVE ORDER NUMBER 98

Whereas, at the request of the Governor of South Carolina and for the purpose of relieving human suffering caused by Hurricane Hugo, by Executive Order Number 98, I ordered the waiving of weight restrictions, licensing and tax requirements for vehicles transporting, out of South Carolina, trees uprooted or damaged by Hurricane Hugo; and

Whereas, Executive Order Number 98 expired on December 4, 1989; and

Whereas, the Governor of South Carolina has requested me to extend the effective date of Executive Order Number 98; and

Whereas, extensive tree damage occurred within North Carolina as a result of Hurricane Hugo and the North Carolina forestry industry has requested that the terms and conditions of Executive Order Number 98 apply to vehicles transporting, from within North Carolina, trees uprooted or damaged by Hurricane Hugo;

Therefore, pursuant to Chapter 166A, the North Carolina Emergency Management Act, and by the authority vested in me as

Governor of the State of North Carolina by the Constitution and laws of this state, and with the concurrence of the Council of State; IT IS ORDERED;

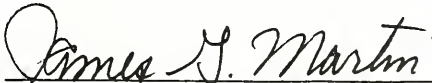
That the term of Executive Order Number 98 is hereby extended until February 3, 1990 subject to the following additional conditions;

Section 1: The waiver of weight restrictions will conform to the following guidelines:

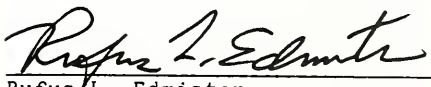
- (1) Vehicle weight will not exceed the maximum gross vehicle weight criteria established by the manufacturer or 90,000 lbs. gross vehicle weight, whichever is less.
- (2) Tandem axle weights shall not exceed 42,000 lbs., and single axle weights shall not exceed 22,000 lbs.

Section 2: The terms and conditions of Executive Order Number 98 and the vehicle weight guidelines set forth in Section 1 above shall extend to vehicles transporting, from within North Carolina, trees uprooted or damaged by Hurricane Hugo.

This the 14th day of December 1989.


James G. Martin
Governor

ATTEST:


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 101
AMENDING EXECUTIVE ORDER NUMBER 55
EXTENDING EXPIRATION DATE OF EXECUTIVE ORDER NUMBER 55

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

The Martin Luther King, Jr. Holiday Commission, established by Executive Order Number 55, on September 30, 1987, is hereby extended, effective September 30, 1989, through September 30, 1991.

Done in Raleigh, North Carolina this the 21st day of December, 1989.

James G. Martin
James G. Martin
Governor

ATTEST

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 102
AMENDMENT TO EXECUTIVE ORDER NUMBER 88
COLUMBUS VOYAGES QUINCENTENARY COMMISSION

Whereas, on May 8, 1989, I established the Columbus Voyages Quincentenary Commission under the Department of Administration by issuing Executive Order Number 88; and

Whereas, I desire to transfer the Columbus Voyages Quincentenary Commission from the Department of Administration to the Department of Cultural Resources;

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Executive Order Number 88 is amended as follows:

Section (a) of Executive Order Number 88 entitled "Columbus Voyages Quincentenary Commission" is amended by transferring the establishment of the Commission from the Department of Administration to the Department of Cultural Resources.

Section (d) of Executive Order Number 88 is amended in part to read, "Administrative support for this Commission shall be provided by the Department of Cultural Resources."

Section (e) of Executive Order Number 88 is amended in part to read, "Funds for reimbursement of such expenses shall be made available from funds authorized to the Department of Cultural Resources for such purposes."

Done in Raleigh, North Carolina, this the 21st day of December 1989.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 103
EXTENSION OF EXECUTIVE ORDER NUMBER 100

Whereas, at the request of the Governor of South Carolina and for the purpose of relieving human suffering caused by Hurricane Hugo, by Executive Order Numbers 98 and 100, I ordered the waiving of weight restrictions, licensing and tax requirements for vehicles transporting, out of South Carolina, trees uprooted or damaged by Hurricane Hugo; and

Whereas, Executive Order Number 100 expired on February 3, 1990; and

Whereas, the Governor of South Carolina has requested me to extend the effective date of Executive Order Number 100; and

Whereas, extensive tree damage occurred within North Carolina as a result of Hurricane Hugo and the North Carolina forestry industry has requested that the terms and conditions of Executive Order Number 100 be clarified;

Now therefore, pursuant to Chapter 166A, the North Carolina Emergency Management Act, and by the authority vested in me as Governor of the State of North Carolina by the Constitution and

laws of this state, and with the concurrence of the Council of State; IT IS ORDERED:

That the term of Executive Order Number 100 is hereby extended until April 15, 1990 subject to the following additional conditions;

Sections 1. The waiver of weight restrictions will conform to the following guidelines:

(1) Vehicle weight will not exceed the maximum gross vehicle weight criteria established by the manufacturer or 90,000 lbs. gross vehicle weight, whichever is less.

(2) Tandem axle weights shall not exceed 42,000 lbs. and single axle weights shall not exceed 22,000 lbs.

Section 2. The terms and conditions of Executive Order Number 98 and 100 and the vehicle weight guidelines set forth in Sections 1 above shall extend to vehicles transporting within North Carolina trees uprooted or damaged by Hurricane Hugo, including field chips. This Order also applies to sawmill residues such as bark, chips and sawdust derived from such trees and produced by any sawmill located in North or South Carolina. This Order shall specifically exclude milled lumber.

Section 3. Vehicles transporting forest products or by-products allowed under Section 2 above are permitted reasonable access to downed timber, concentration yards and primary wood-processing plants by way of secondary roads; provided, however, that posted limitations on light-traffic roads and bridges must be observed.

Section 4. The driver of any vehicle transporting a cargo which originated in North Carolina and for which relief is claimed under this Order shall provide on demand to any law enforcement officer identification and authorization issued to the owner by personnel designated by the N.C. Division of Forest Resources for this purpose.

Section 5. The North Carolina Department of Transportation shall enforce the conditions set forth in Sections 1 through 4 in a manner which would best accomplish the implementation of this Executive Order without endangering the motorists on North Carolina roadways.

This the 6th day of February, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 104 AMENDING EXECUTIVE ORDER NUMBER 90

WHEREAS, Executive Order Number 90 established the Governor's Advisory Council on Literacy; and

WHEREAS, our public libraries play a significant role in the literacy effort across our State; and

WHEREAS, it has been made to appear that the contribution of the Department of Cultural Resources will assist the Council in achieving its goals;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED: Executive Order Number 90 is hereby amended to include the Secretary of the Department of Cultural Resources in its membership as follows:

Section 2. MEMBERSHIP

10. Four members-at-large to be appointed by the Governor;
and
11. The Secretary of the Department of Cultural Resources,
or the Secretary's designee.

This Executive Order shall become effective immediately.

Done in Raleigh, North Carolina, this the 8th day of
February, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 105
EXTENDING EXPIRATION DATE OF EXECUTIVE ORDER NUMBER 3

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

The North Carolina Advisory Council on Vocational Education, established by Executive Order Number 3, and extended by Executive Order Number 51, is hereby extended, effective May 15, 1989, through May 15, 1991.

Done in Raleigh, North Carolina, this the 8th day of February, 1990.


James G. Martin
Governor

ATTEST:


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 106
AMENDING EXECUTIVE ORDER NUMBER 66
EXTENDING EXPIRATION DATE OF EXECUTIVE ORDER NUMBER 66

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

The State Employees Combined Campaign, established by Executive Order Number 66, on January 29, 1988, is hereby extended, effective January 29, 1990, through January 29, 1992.

Done in Raleigh, North Carolina, this the 22 day of February 1990.


James G. Martin
Governor

ATTEST:


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 107 NORTH CAROLINA GOVERNOR'S COMMISSION ON WORKFORCE PREPAREDNESS

North Carolina has enjoyed the status of being the first in economic development in the nation for three consecutive years. In large part, this is due to the availability of a highly motivated, competent workforce which is devoted to the work ethic.

However, global economic and technological forces are creating a new knowledge-intensive economy that requires a highly-adaptable and better-educated worker. The new workplace demands workers with good basic academic skills, problem-solving skills, communication skills, and leadership skills. Most importantly, employers need workers who know how to learn and can readily adapt to a changing work environment. Yet, many North Carolinians are not prepared for the new skill requirements of the workplace. Too many problems persist among our human resources that suggest a growing gap between the skills employers need and the skills both new and experienced workers bring to the labor market. These problems include an unacceptable number of high school dropouts, high school graduates who show serious skill deficiencies, and adults who are unemployed, underemployed or face

dislocation in the future because of illiteracy or inadequate basic skills.

Further, projections indicate that future demographic shifts will create both opportunities and problems regarding workforce preparedness. A shrinking pool of new workers provides us a window of opportunity to lift out of poverty those segments of our population who historically have been stalled on the lower rung of our economic ladder. However, this same population that we will depend upon to relieve the growing labor shortage faces formidable barriers to employment because they are the least skilled of our citizens.

The education and skill level of North Carolina's human resources are the foundation of our economic prosperity and a means by which we can increase productivity, raise our standard of living and lift our poor out of poverty. Recognizing this basic premise, we must begin to build an education, employment and training system that will upgrade the skills of our existing workforce and prepare new workers for a constantly changing economy.

For these reasons, I hereby establish a Commission on Workforce Preparedness to raise these concerns to the highest level of commitment among the agencies of the State of North Carolina. Further, this Commission is to assure the greatest cooperation possible between public and private entities in resolving these concerns.

Therefore, by authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. ESTABLISHMENT. There is hereby established the North Carolina Governor's Commission on Workforce Preparedness.

Section 2. MEMBERSHIP. (a) The Commission shall be composed of the following officials of the State of North Carolina and public members:

Commissioner - Department of Labor

Superintendent - Department of Public Instruction

Secretary - Department of Administration

Secretary - Department of Economic and Community Development

Secretary - Department of Human Resources

Secretary - Department of Correction

President - North Carolina System of Community Colleges

President - University of North Carolina

Chairman - Employment Security Commission

Chairman - State Board of Education

Chairman - N.C. Job Training Council

Chairman - N.C. Business Committee for Education

Chairman - N.C. Advisory Council on Vocational Education

Eight employers who fairly represent the spectrum of employers and the population in North Carolina.

Three state Senators to be appointed by the Lt. Governor.

Three representatives appointed by the Speaker of the House of Representatives.

Three members at large.

(b) The Chairman shall be appointed by, and serve at the pleasure of, the Governor.

(c) The Secretary of Department of Economic and Community Development, the Superintendent of Public Instruction, the President of the N.C. System of Community Colleges, and the Vice President of the University of North Carolina shall be the Vice-Chairmen of the Commission.

Section 3. MEETINGS. (a) The Commission shall meet at such times and locations as designated by the Chairman but not less than quarterly. All members who are public officials shall attend all meetings in person unless prevented from doing so by illness or by their official duties having priority over their responsibilities as Commission members, in which case absent members may be represented by their designees who shall be authorized to vote.

(b) For the purpose of conducting business, a quorum of the Commission shall consist of 16 members or their designees.

Section 4. PURPOSE. (a) Our goal in establishing the Commission is to develop strategies that will upgrade the skills of our existing workforce and prepare new workers for a constantly changing economy. Consequently, the Commission shall prepare and submit forthwith to the Governor a strategic and comprehensive plan for effectively addressing present and future workforce needs in North Carolina.

(b) Prior to submitting the comprehensive plan to the Governor, the Commission may develop and recommend to the Governor such intermediate measures in the areas of Workforce Preparedness as the Commission deems appropriate.

Section 5. INTER-AGENCY COMMITTEES. The Commission on Workforce Preparedness may establish such inter-agency committees as are necessary to provide the Commission with expert advice and assistance. These inter-agency committees may consist of personnel from the public agencies and individuals from the private section.

Section 6. COOPERATION OF STATE AGENCIES. On request all agencies and departments of the State of North Carolina shall cooperate with the Commission in the development of the comprehensive plan, and in the development and recommendation to the Governor of such immediate actions or initiatives as determined under Section 4(b) of this Order.

Section 7. ADMINISTRATIVE SUPPORT AND EXPENSES. Those agencies and departments represented on the Commission shall provide such staff and administrative support as may be requested by the Commission.

No per diem will be paid to commission members. Those members of the Commission who are state employees shall receive travel and subsistence in accordance with G.S. 138-6. Those members of the Commission who are also members of the General Assembly shall receive travel and subsistence in accordance with G.S. 120-3.1(a)(2)-(a)(4). Those members of the Commission who are not state employees shall receive travel and subsistence in accordance with G.S. 138-5 to be paid by the Department of Administration.

Section 8. This order shall be effective immediately and shall remain in effect until terminated.

Done in Raleigh, North Carolina, this the 14th day of March,
1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 108
REESTABLISHMENT OF NORTH CAROLINA DRUG CABINET AND
RESCISSION OF EXECUTIVE ORDERS 80, 81, AND 97

WHEREAS, by Executive Order Number 80, I established the North Carolina Drug Cabinet to develop and submit to the Governor a proposed comprehensive plan for effectively combating trafficking and illegal drug use in North Carolina, including appropriate punishment and for the education and treatment of those citizens suffering from drug abuse and dependency; and

WHEREAS, on March 19, 1990, the North Carolina Drug Cabinet submitted to me a comprehensive plan for effectively combating trafficking and illegal drug use in North Carolina, including appropriate punishment and for the education and treatment of those citizens suffering from drug abuse and dependency; and

WHEREAS, it appears to me after a thorough review of the North Carolina Drug Cabinet's comprehensive plan that implementation of the plan will be best accomplished by a central agency responsible for the coordination of the state's anti-drug efforts;

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. The North Carolina Drug Cabinet is hereby reestablished as the central agency responsible for the coordination of the state's anti-drug effort.

Section 2. Membership. (a) The North Carolina Drug Cabinet shall be composed of the following officials of the State of North Carolina:

- (1) the Lieutenant Governor;
 - (2) the Attorney General;
 - (3) the Superintendent of the Department of Public Instruction;
 - (4) the Secretary of the Department of Administration;
 - (5) the Secretary of the Department of Correction;
 - (6) the Secretary of the Department of Crime Control and Public Safety;
 - (7) the Secretary of the Department of Economic and Community Development
 - (8) the Secretary of the Department of Environment, Health and Natural Resources;
 - (9) the Secretary of the Department of Human Resources; and
 - (10) the Secretary of the Department of Transportation.
- (b) The Lieutenant Governor shall be the Chairman of the

Cabinet.

Section 3. Meetings. (a) The N.C. Drug Cabinet shall meet at such times and locations as designated by the Chairman but not less than monthly. All members shall attend all meetings in

person unless prevented from doing so by illness or by their official duties having priority over their responsibilities as Drug Cabinet members, in which case absent members may be represented by their designees.

(b) For the purpose of conducting business a quorum of the Drug Cabinet shall consist of seven members or their designees.

Section 4. Responsibilities. (a) The North Carolina Drug Cabinet shall be responsible for:

- (1) coordinating and overseeing the implementation of the comprehensive "Plan of Action for the State of North Carolina";
- (2) developing a formal evaluation procedure for state drug and alcohol programs and to systematically evaluate on an annual basis all state drug and alcohol programs;
- (3) monitoring state drug and alcohol programs to reduce overlap of programs;
- (4) monitoring federal and state dollars to enhance greater utilization of available resources;
- (5) developing a uniform system of collection and dissemination of drug and alcohol related data, research, and programmatic funding information;
- (6) recommending to the Governor changes in state drug and alcohol policies, programs and statutes;
- (7) assisting state agencies in disseminating information on new anti-drug laws, policies and available support;

- (8) linking federal and state anti-drug and alcohol resources with state and local agencies and programs in need of support;
- (9) coordinating the state's Challenge Program for building county and municipal task force addressing local drug and alcohol related programs and policies;
- (10) develop a state "Partnership for Drug Free Public Housing" program which addresses the special needs of inner city communities being destroyed by drug activities;
- (11) develop and implement the "N.C. Drug Free" public awareness campaign; and
- (12) other duties as may be assigned by the Governor.

(b) The North Carolina Drug Cabinet shall report on its activities and progress on a semiannual basis to the Governor and the public.

Section 5. Advisory Councils. The Governor's Council on Alcohol and Drug Abuse Among Children and Youth established by Executive Order 23 and the Governor's Inter-Agency Advisory Team on Alcohol and Drug Abuse established by Executive Order 53 shall act as advisors to the Drug Cabinet. The Drug Cabinet may establish other advisory councils as needed to provide the Cabinet with expert advice in specific areas such as law enforcement related activities, health treatment and education.

Section 6. Administrative Support and Expenses. Those agencies and departments represented in the Drug Cabinet shall

provide such staff, administrative and financial support as may be requested by the Governor.

Section 7. Rescission of Executive Orders 80, 81, and 97.
Executive Orders 80, 81, and 97 are hereby rescinded.

Section 8. This order shall be effective immediately and shall remain in effect until terminated.

Done in Raleigh, North Carolina, this the 19th day of March, 1990.



James G. Martin
Governor

ATTEST:



Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 109 THE NORTH CAROLINA SPORTS DEVELOPMENT COMMISSION

WHEREAS, the Department of Economic and Community Development is charged with the duty of promoting and assisting in the total economic development of North Carolina; and

WHEREAS, sporting events represent an expanding market with positive economic effects; and

WHEREAS, it is the duty of the Sports Development Office to develop and promote efforts to recruit sporting events, sporting franchises, and training centers to North Carolina; and

WHEREAS, an advisory commission to advise, assist, and support the Sports Development Office and the Department of Economic and Community Development in matters involving sports development initiatives is necessary.

NOW THEREFORE, By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. There is hereby established the North Carolina Sports Development Commission.

Section 2. Membership. The Governor shall appoint the members of the Commission. The Commission shall consist of no fewer than 12 members and no more than 24 members. Members shall be representatives of sports agencies and organizations, government entities, the business community, or individuals who have an interest in sports development.

Section 3. Terms. All members shall serve at the pleasure of the Governor.

Section 4. Officers. The officers of the Commission shall be a Chairman, Vice-Chairman, and Secretary. The Governor shall designate a Chairman from the membership. The Vice-Chairman and Secretary shall be elected by the Commission. All officers shall serve for a term of one (1) year. Vacancies in any office shall be filled for the unexpired term by election or appointment depending on the office vacated. The officers shall have the following duties:

Chairman: It shall be the duty of the Chairman to preside at all meetings of the Commission, to appoint all committee chairmen, to assist all chairmen in planning of committee activities, to supervise all chairmen as to the management of committee plans, to call all special meetings with the approval of the Assistant Secretary for Economic Development, and to be an ex officio member of all committees.

Vice-Chairman: The Vice-Chairman shall assist the Chairman and in the absence of the Chairman shall perform the duties of the office of the Chairman. The Vice-Chairman shall

accept special assignments from the Chairman and perform other such duties as delegated by the Commission.

Secretary: The Secretary shall be responsible for the minutes of the meetings of the Commission and the Executive Committee, and shall keep an up-to-date list of names and addresses of Commission members and a record of their attendance at meetings.

Section 5. Executive Committee. There shall be an Executive Committee consisting of the Officers of the Commission, the Assistant Secretary for Economic Development, and the Director and the Assistant Director of the Sports Development Office. The Executive Committee may exercise all of the operating authority of the full Commission within the power delegated to it by the Commission. The full Commission shall remain responsible for the actions of the Executive Committee and shall remain responsible for supervision of the Executive Committee.

Section 6. Meetings. The Commission shall meet at least quarterly. Members shall receive notice of full Commission meetings at least twenty-one (21) days prior to the meeting. A quorum shall consist of a majority of the current Commission membership. The 1989 revised edition of Roberts Rules of Order shall be the parliamentary authority for all matters of procedure.

Section 7. Administrative Support and Expenses. The staff of the Sports Development Office shall provide administrative support to the Commission. A Sports Development Office staff member shall serve as Administrator to the Commission. Permanent records of all Commission business shall be maintained in the

Sports Development Office and shall be the responsibility of the Administrator. While on official business, members of the Commission who are State employees will review necessary travel and subsistence expenses as authorized by N.C.G.S. 138-6. Members of the Commission who are not State employees will receive per diem, travel and subsistence as authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Sports Development Office.

Section 8. Duties and Powers. The Commission shall perform such duties as assigned by the Governor. It shall have the following specific duties, powers, and functions:

- (1) assist the Sports Development Office in planning and implementation of sports development initiatives;
- (2) act as spokespersons for the State of North Carolina in its efforts to attract sports activities;
- (3) assist in the creation and updating of directories containing the following information:
 - A. current sporting events being held in our State;
 - B. facilities available for sporting events in our State; and
 - C. available sporting events and bid deadlines;
- (4) assist the Sports Development Office in forming a partnership with the governing associations of sporting activities, the North Carolina business community, individuals who conduct major and minor sporting events, and key facility managers in our state;
- (5) assist in bid preparation and project promotion; and

(6) advise and assist in the development of future goals and objectives for the Sports Development Office.

The Commission's role shall be advisory in nature. All decisions regarding the adoption of policies shall be the responsibility of the Secretary of the Department of Economic and Community Development and the Sports Development Office.

Section 9. Semiannual Report. The Commission shall report semiannually to the Governor regarding the progress of sports development in North Carolina.

This Order is effective immediately and shall remain in effect until March 29, 1992, unless amended or extended by further Executive Order of the Governor.

Done in Raleigh, North Carolina, this the 29th day of March, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 110 GOVERNOR'S ADVISORY COUNCIL ON INTERNATIONAL TRADE

WHEREAS, international trade is an important factor in the growth of the economy of our State; and

WHEREAS, it has been made to appear to me that an advisory council is necessary to foster international trade;

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. There is hereby established the Governor's Advisory Council on International Trade.

Section 2. Membership. The Governor shall appoint persons to serve on the Advisory Council. The Council shall consist of no fewer than 9 members. Those persons appointed shall be leaders in various aspects of international trade.

Section 3. Chairmanship and Terms. The Governor shall designate the Chairman of the Advisory Council. All members shall serve at the pleasure of the Governor.

Section 4. Meetings. The Council shall meet on a quarterly basis or as directed by the Governor or the Secretary of the Department of Economic and Community Development.

Section 5. Duties and Powers. The Council shall perform such duties as assigned by the Governor which shall include, but not be limited to, the following:

- a. serve as a forum for international trade leaders in North Carolina to exchange concepts in international trade development;
- b. facilitate the development of international trade initiatives and communicate these initiatives to economic development and business interests in the State;
- c. offer advice regarding international trade to the Department of Economic and Community Development;
- d. build a network of public and private interests in international trade;
- e. assist in creating a plan for international trade development in North Carolina; and
- f. set specific goals and monitor the progress of international trade development.

Section 6. Administration and Expenses. Administrative support for the Council shall be provided by the Department of Economic and Community Development. While on official business, members of the Council shall be entitled to such per diem and reimbursement for travel and subsistence as may be authorized for members of State Boards and Commissions generally, pursuant to

N.C.G.S. 138-5 and 138-6. The Secretary of the Department of Economic and Community Development shall provide funds for this purpose.

Section 7. Semiannual Report. The Council shall report semiannually to the Governor regarding the progress of international trade development.

This Executive Order is effective immediately and shall remain in effect until March 29, 1992, unless terminated earlier or extended by further Executive Order.

Done in Raleigh, North Carolina, this the 29th day of March, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 111
AMENDMENT AND EXTENSION OF EXECUTIVE ORDER NUMBER 45

WHEREAS, the Governor's Language Institutes Advisory Board was established by Executive Order Number 45, reissued and extended by Executive Order Number 93; and

WHEREAS, it has been made to appear to me that it is necessary to clarify that participation in the Institutes is limited to elementary and secondary foreign language teachers; and

WHEREAS, it has been made to appear to me that the Advisory Board should have discretion to establish guidelines for private school teachers to participate in the Institutes;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Executive Order Number 45, reissued and extended by Executive Order Number 93, is hereby amended and extended as follows:

Section 2. Functions: The Board shall have the following duties:

- (A) oversee planning and operation of the Governor's Language Institutes which shall be located in various

locations across the State to provide educational programs for North Carolina elementary and secondary teachers of foreign languages;

- (B) select an external consultant to assist in the planning of the Governor's Language Institutes' programs and to recommend curriculum, instructors, location of Institutes, and sources of support;
- (C) select a full-time Executive Director to manage the Institutes; and
- (D) establish guidelines pertaining to the participation of teachers from non-public schools in the Governor's Language Institutes Program.

Section 4. Effective Date and Expiration Date. This Executive Order shall be effective immediately, and in accordance with North Carolina law shall expire two years from the date it is signed. It is subject to reissuance at expiration.

Done in the Capital City of Raleigh, North Carolina, this

12th day of April, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 112
RESTRUCTURING AND REESTABLISHING
GOVERNOR'S ADVISORY COMMISSION ON TRAVEL AND TOURISM

WHEREAS, travel and tourism is of major economic concern to the State; and

WHEREAS, participation in the Governor's Advisory Commission on Travel and Tourism by members of the General Assembly and representatives of specific industries in travel and tourism would enhance the development of travel and tourism issues; and

WHEREAS, it has been made to appear to me that a restructuring of the Governor's Advisory Commission on Travel and Tourism is desirable in order to foster such participation;

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. Reestablishment. The Governor's Advisory Commission on Travel and Tourism, originally established by Executive Order Number 8, and extended and reissued by Executive Order Number 51 and Executive Order Number 93, is hereby reestablished according to the terms of this order.

Section 2. Membership. The Commission shall consist of not less than the following 16 members:

- a. the Director of the North Carolina Division of Travel and Tourism, who shall serve ex officio;
- b. two Senators, currently serving in the North Carolina General Assembly, having interest in and knowledge of matters related to travel and tourism, who shall be appointed by the President of the Senate;
- c. two Representatives, currently serving in the North Carolina General Assembly, having an interest in and knowledge of matters related to travel and tourism, who shall be appointed by the Speaker of the House of Representatives;
- d. one member associated with the transportation industry who shall be appointed by the Governor;
- e. one member associated with the food service industry who shall be appointed by the Governor;
- f. one member associated with the lodging industry who shall be appointed by the Governor;
- g. at least two at-large members with an interest in the travel and tourism industry who shall be appointed by the Governor;
- h. one member associated with a local chamber of commerce, tourism development authority, or convention and visitors bureau who shall be appointed by the Governor;
- i. one member associated with municipal government who shall be appointed by the Governor;

- j. one member associated with The Travel Council of North Carolina, Inc. (or its successors) who shall be appointed by the Governor;
- k. one member associated with parks and recreation or cultural resources who shall be appointed by the Governor;
- l. one member with interest in and knowledge of the environmental impact of travel and tourism who shall be appointed by the Governor; and
- m. one member associated with county government who shall be appointed by the Governor.

Section 3. Terms. All members shall serve at the pleasure of the appointing authority.

Section 4. Chairmanship. The Commission shall elect a chairperson from its membership.

Section 5. Meetings. The first meeting of the Commission shall be called by the Director of the Division of Travel and Tourism. Thereafter, meetings will be held on a quarterly basis or as directed by the Governor or Secretary of Economic and Community Development.

Section 6. Quorum. A majority of the membership shall constitute a quorum.

Section 7. Vacancies. Appointments to fill vacancies in the membership of the Commission that occur due to resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term and shall be made by the same appointing authority that made the initial appointment.

Section 8. Duties and Powers. The duties of the Commission shall be:

- a. to assist and advise the Secretary of Economic and Community Development in the planning and implementation of policy and priorities for the promotion and development of travel and tourism in the State;
- b. to assist and advise the Secretary of Economic and Community Development in the development of a budget for the Division of Travel and Tourism;
- c. to recommend programs to the Governor, the General Assembly, and the Secretary of Economic and Community Development that will promote the State as a travel and tourism destination and that will develop travel and tourism opportunities throughout the State;
- d. to assist and advise the Secretary of Economic and Community Development in setting criteria for selection of an advertising agency which will assist the department in promotion of the State as a travel and tourism destination within the context of the normal advertising agency review cycle. These criteria shall be utilized by a selection committee appointed by the Secretary of Economic and Community Development;
- e. to recommend to the Secretary of Economic and Community Development and the General Assembly rules, regulations, or standards that may be necessary to administer a matching funds tourism grant program;

- f. to promote the exchange of ideas and information on travel and tourism between State and local governmental agencies, and private organizations and individuals; and
- g. to advise the Secretary of Economic and Community Development upon any matter that the Secretary, Governor, or Director of the Division of Travel and Tourism may refer to the Commission.

Section 9. Administrative Support. The Secretary of Economic and Community Development shall provide clerical and other services as required by the Commission.

Section 10. Expenses. While on official business, Commission members who are legislators will receive subsistence and travel allowances at the rates set forth in N.C.G.S. 120-3.1. Commission members who are employees of the State will receive travel allowances at the rate set forth in N.C.G.S. 138-6. All other Commission members will receive per diem, subsistence, and travel expenses at the rates set forth in N.C.G.S. 138-5.

Section 11. Previous Orders Rescinded. Executive Order Number 8, and those portions of Executive Orders Number 51 and 93 dealing with the Governor's Advisory Committee on Travel and Tourism, dated June 28, 1985, July 14, 1987, and June 20, 1989, respectively, are hereby rescinded. All records of the Governor's Advisory Commission on Travel and Tourism created pursuant to these executive orders are transferred to the Advisory Commission created herein. The Advisory Commission herein shall be the successor to the Governor's Advisory Commission on Travel and Tourism.

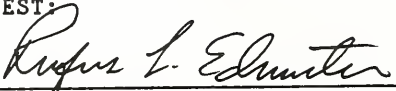
Section 12. This Executive Order is effective immediately and shall remain in effect until January 31, 1992, unless terminated earlier or extended by further Executive Order.

Done in Raleigh, North Carolina this the 12th day of April, 1990.



James G. Martin
Governor

ATTEST:



Rufus L. Edmisten
Secretary of State

State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER 113
COMMITTEE ON GOVERNOR'S CONFERENCES ON
LIBRARY AND INFORMATION SERVICES

WHEREAS, access to information and ideas is indispensable to the development of human potential, the advancement of civilization, and the continuance of enlightened self government; and

WHEREAS, the preservation and the dissemination of information and ideas are the primary purpose and function of the library and information services; and

WHEREAS, libraries and information services are essential to a learning society; and

WHEREAS, North Carolina's economic strength and the productivity of its workforce depends on access to information; and

WHEREAS, the President of the United States, with the concurrence of the United States Senate and House of Representatives, has called for the convening of the Second White

House Conference on Library and Information Services to be held in Washington, D.C., July 9-13, 1991; and

WHEREAS, Public Law 100-382, the White House Conference on Library and Information Services authorizing act, provides \$30,000 in federal funding to North Carolina to conduct statewide conferences leading up to the White House Conference;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1. Establishment. That the North Carolina Governor's Conference on Library and Information Services Committee is created.

Section 2. Membership. The Committee will be composed of forty persons whom I will appoint for a one year term beginning May 1, 1990, and who shall serve at my pleasure.

Section 3. Chairman. The Secretary of Cultural Resources will serve as the chairperson of the Committee established herein.

Section 4. Purpose. The mission of the Committee shall be to organize and conduct Governor's Conferences on Library and Information Services. Nine regional conferences and one statewide conference shall be held between August 1990 and February 1991, with the purpose of developing recommendations for further improvement of library and information services to increase productivity, expand literacy, and strengthen democracy.

Delegates elected at these conferences shall elect sixteen (16) delegates to the Second White House Conference on Library and Information Services.

Section 5. Administrative Support. The North Carolina Department of Cultural Resources Division of the State Library is the coordinating agency to work with the Committee in planning and conducting all regional and statewide events leading up to the White House Conference.

Section 6. Travel and Subsistence. The Department of Cultural Resources shall pay travel and subsistence to Committee members from the \$30,000 in federal money appropriated for this purpose.

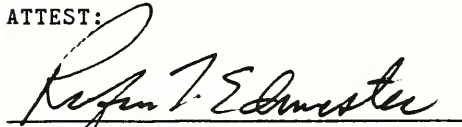
Section 7. Effective Date and Expiration Date. This Executive Order shall be effective immediately and shall expire July 13, 1991.

Done in the Capital City of Raleigh, North Carolina, this the

20th day of April, 1990.


James G. Martin
Governor

ATTEST:


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 114 BUDGET ADMINISTRATION

Article III, Sec. 5(3) of the Constitution provides that the State may not operate at a deficit during the fiscal period covered by a budget. For these purposes, a "deficit" is defined as having been incurred when total expenditures for the fiscal period of the budget exceed the total of receipts during the period, plus the surplus remaining in the State Treasury at the beginning of the period. The fiscal period for the current budget is the 1989-91 biennium.

To insure that the State does not incur a deficit for the biennium covered by a budget, Article III, Sec. 5(3) requires the Governor to survey continually the collection of revenue. If, as a result of his surveys, he determines that actual receipts for the biennium, when added to the surplus remaining in the Treasury at the beginning of the biennium, will not be sufficient to pay budgeted expenditures, the Governor, after first making adequate provision for the prompt payment of the principal and interest on the State's outstanding bonds and notes, must effect the necessary

economies in State expenditures to keep the deficit from occurring.

Continually surveying the collection of the State's revenues pursuant to Article III, Sec. 5 (3) of the Constitution is a normal function of the Office of Budget and Management and reports on its surveys are routinely received by me.

The budget for the 1989-91 biennium calls for expenditures for the biennium of \$24,580,332,439. The combined surplus remaining in the Treasury at the beginning of the biennium for the general fund and highway fund was budgeted at \$573,901,175, and receipts for the period were budgeted to be \$24,006,431,264. As enacted, the budget adopted by the General Assembly for the biennium was a balanced budget.

In application it has not turned out to be balanced.

Initially, the Office of Budget and Management reports of its surveys of the collection of the State's revenues indicated that receipts for the biennium, as actually received, were approximately as budgeted. Accordingly, actual expenditures for the biennium were set in keeping with the budgeted appropriations. As the biennium progressed, however, cumulative receipts, as actually received, began to lag budgeted receipts.

In recent months the deviation between actual and budgeted receipts has reached the point that it appears that the budget enacted by the General Assembly for the 1989-91 biennium cannot be administered as enacted without the State incurring a deficit in its administration. Accordingly, it is prudent that the power given the Governor by Article III, Sec. 5(3) of the Constitution,

to insure that the State does not incur deficits in the administration of its budgets be invoked.

THEREFORE, pursuant to authority granted to the Governor by Article III, Sec. 5(3) of the Constitution and to fulfill the duties required of the Governor thereunder:

1. It is found as a fact that based on general fund, highway fund and highway trust fund revenue collections through April 30, 1990, and projections for these revenues through June 30, 1991, actual receipts for the 1989-91 biennium will not meet those anticipated and budgeted by the 1989 General Assembly.

2. From this fact it is determined and concluded that unless economies in State expenditures are made, the State's general fund expenditures will exceed general fund receipts, including transfers from the highway trust fund, for the biennium by \$842 million and the State's highway fund and highway trust fund expenditures will exceed highway fund receipts and highway trust fund receipts for the biennium by \$165.15 million.

3. To insure that a deficit is not incurred in the administration of the State budget for the 1989-91 biennium, the following economies in State expenditures are found to be necessary and are hereby ORDERED:

(a) The Office of State Budget and Management will reduce as necessary State expenditures from funds appropriated to operate State departments and institutions;

(b) The Office of State Budget and Management will reduce as necessary State aid funds to the State Board of

Education, to the State Board of Community Colleges and to other non-state recipients;

(c) The Office of State Budget and Management will halt expenditures for capital improvement projects as necessary for which State funds have been appropriated but not placed under State contract, and if necessary transfer any unused capital improvement funds to the general fund and/or the highway fund;

(d) The Office of State Budget and Management will transfer as necessary non-general fund and non-highway fund receipts into the general fund to support appropriation expenditures in order to avoid a deficit in the general fund;

(e) The Office of State Budget and Management may borrow receipts from non-general fund State receipts and non-highway fund State receipts for support of general fund appropriation expenditures;

(f) The Office of State Budget and Management may order the cancellation of purchase orders in the State general fund supported departments and institutions for which there are insufficient funds available.

(g) The Office of the State Controller, at the direction of the Director of the Budget, is directed to monitor disbursements as presented on requestions for CASH, and as necessary, shall release CASH requisitions in the following priority order for payment of:

1. state debt;
2. payrolls and public assistance benefits;

3. state aid to local government;
4. health and medical provider payments; and
5. all other necessary expenditures.

(h) The office of the State Controller is directed to receive the employer portion of retirement contributions for all state funded retirement systems and to place such funds in a special reserve as established by the Office of State Budget and Management.

4. This Executive Order is effective immediately and shall remain in effect, as written, until terminated or amended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the 8th day of May, 1990.


James G. Martin
Governor

ATTEST


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 115
AMENDING EXECUTIVE ORDER NUMBER 92
ENTITLED ESTABLISHING THE WESTERN NORTH CAROLINA
ENVIRONMENTAL COUNCIL

WHEREAS, by Executive Order Number 92, I established the Western North Carolina Environmental Council; and

WHEREAS, it has been made to appear to me that certain amendments to Executive Order Number 92 are necessary in light of subsequent legislation enacted by the General Assembly;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

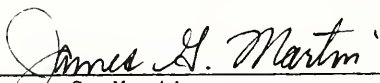
Section 3 of Executive Order Number 92 is amended in part to read: "... The Secretaries of the Departments of Administration, Economic and Community Development, Environment, Health and Natural Resources, and Transportation or their designees shall be ex officio members of the Council."

Section 9 of Executive Order Number 92 is amended in part to read: "... The Departments of Administration, Economic and Community Development, Environment, Health and Natural Resources, and Transportation, together, shall furnish the Council with such staff as it reasonably shall need."

Section 10 of Executive Order Number 92 is amended in part to read: "... Funds for the reimbursement of such expenses shall be made available from funds appropriated to the Departments of Administration, Economic and Community Development, Environment, Health and Natural Resources, and Transportation as directed by the Director of the Budget."

These amendments shall be effective immediately. All other provisions of Executive Orders Number 92 and 96 shall remain in effect and unchanged.

Done in Raleigh, this the 22nd day of May, 1990.


James G. Martin
Governor

ATTEST


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 116
AMENDING AND EXTENDING EXECUTIVE ORDER NUMBER 78
GOVERNOR'S TASK FORCE ON INJURY PREVENTION

WHEREAS, I established by Executive Order Number 78 the Governor's Task Force on Injury Prevention; and

WHEREAS, it has been made known to me that the Task Force should continue;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Executive Order Number 78, Section 3, paragraph B, is amended to read:

B. The Task Force shall have the following duties:

- 1) promote coordination of the State's injury prevention efforts so that resources can be used efficiently;
- 2) strengthen injury prevention efforts in the State;
- 3) serve as a resource to the Injury Control Section of the Department of Environment, Health, and Natural Resources; and

4) encourage study and discussion of safety issues.

Section 2. Executive Order Number 78, as amended herein, is extended through November 1, 1992.

Done in Raleigh, North Carolina, this the 22nd day of May, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 117
AMENDING EXECUTIVE ORDER NUMBER 108
TO INCLUDE THE SECRETARY OF THE DEPARTMENT OF REVENUE
IN THE MEMBERSHIP OF THE NORTH CAROLINA DRUG CABINET

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Executive Order Number 108, Section 2(a) is hereby amended to read as follows:

"... (9) the Secretary of the Department of Human Resources;

(10) the Secretary of the Department of Transportation;
and

(11) the Secretary of the Department of Revenue."

Section 2. This Order shall be effective immediately and shall remain in effect until terminated.

Done in Raleigh, North Carolina this the 30th day of May, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 118
EXTENDING EXECUTIVE ORDER NUMBER 79
NORTH CAROLINA SMALL BUSINESS COUNCIL

WHEREAS, small business is a major contributor to the economic health of North Carolina; and

WHEREAS, it has been made to appear to me that the North Carolina Small Business Council should continue;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of this State, IT IS ORDERED:

Executive Order Number 79, amended by Executive Order Number 84, is hereby extended and shall remain in effect until June 30, 1992, unless terminated earlier or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this

12th day of June, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 119
ESTABLISHING THE NORTH CAROLINA
QUALITY LEADERSHIP AWARDS COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. The North Carolina Quality Leadership Awards Council is hereby established. The Council shall have the following subordinate committees:

- A. the Examination Board;
- B. the Recognition Committee; and
- C. such other committees as the Council shall create.

Section 2. Membership. The Council shall consist of not more than twenty (20) members, including:

- A. the Secretary of Economic and Community Development;
- B. the President of the University of North Carolina System;
- C. the President of the Community College System;
- D. the Science Advisor to the Governor;
- E. a member recommended by the Lieutenant Governor;
- F. a member recommended by the Speaker of the House;

- G. the President of North Carolina Citizens for Business and Industry;
- H. the President of the North Carolina Quality Leadership (NCQL) Foundation; and
- I. no more than twelve (12) ranking officials of Award recipient organizations, serving three year terms starting in the year subsequent to winning the Award.

Section 3. Chairmanship, Terms, and Vacancies. The Governor shall serve as Honorary Chairman. The North Carolina Quality Leadership Foundation will provide the Secretariat. All members under subsections (e), (f), and (i) above shall serve at the pleasure of the Governor. The Governor shall fill all vacancies and, if a vacancy occurs in a seat held by a member recommended by the Lieutenant Governor or the Speaker of the House, the Governor shall fill that vacancy after recommendation by the appropriate official.

Section 4. Purposes. The purposes of the Council shall be:

- A. to enhance education and training of management and workforce, both current and future;
- B. to improve competitiveness of North Carolina business and industry, especially supplier relationships;
- C. to encourage exchange of information toward quality improvement, especially through regional councils and industry associations; and
- D. to promote application of total quality management in North Carolina organizations.

Section 5. Duties of Council, Board, and Committees.

A. The North Carolina Quality Leadership Awards Council shall have the following responsibilities:

1. approve and announce Achievement Award and Honor Roll recipients in the categories of manufacturing and service industries, both large and small;
2. approve guidelines to examine applicant organizations;
3. approve appointments of judges and examiners;
4. arrange appropriate annual awards and recognition for recipients;
5. formulate recommendations for change in the form or coverage of awards, in cooperation with the North Carolina Quality Leadership Foundation; and
6. review related education, training, technology transfer, and research initiatives proposed by the North Carolina Quality Leadership Foundation.

B. The Council shall form an Examination Board and a Recognition Committee. It may form such other committees as necessary to evaluate and recognize quality leadership by North Carolina organizations.

C. The members of an Examination Board shall be drawn from professional and technical experts in total quality management and quality assurance related fields. Members shall be invited to serve by the Council and shall serve at its pleasure.

D. The members of the Recognition Committee shall be drawn from business, industry, education and government personnel concerned with award programs and public relations, especially

representing industry associations and regional councils concerned with quality and productivity improvement. Members shall be invited to serve by the Council and shall serve at its pleasure.

E. The Examination Board shall:

1. conduct evaluation of applicant organizations by:
 - (a) selecting and nominating Examiners and Judges;
and
 - (b) assessing applications, providing feedback,
and conducting site visits of participating
organizations;
2. recommend Award guidelines; and
3. nominate Award recipients.

F. The Recognition Committee shall be responsible to:

1. recommend the nature and types of physical awards;
and
2. recommend the format and timing of ceremonies.

Section 6. Administrative Support. Operations support for the Council and Examination Board, including administrative and training activities, shall be provided by the NCQL Foundation staff. The Department of Economic and Community Development, the University of North Carolina System, and/or the Community College System shall provide additional staff and administrative support on a voluntary basis.

Section 7. This Order shall become effective immediately and shall expire on June 30, 1993, unless extended or terminated by further Executive Order.

Done in Raleigh, North Carolina, this the 18th day of
June, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 120

AN EXECUTIVE ORDER ESTABLISHING ADDITIONAL CRITERIA FOR
ELIGIBILITY OF CERTAIN MEMBERS OF THE COASTAL RESOURCES COMMISSION

WHEREAS, N.C.G.S. 113A-104(c) directs that eight of the members appointed by the Governor to the Coastal Resources Commission shall be persons who do not derive any significant portion of their income from land development, construction, real estate sales, or lobbying and do not otherwise serve as agents for development-related business activities; and

WHEREAS, N.C.G.S. 113A-104(c) directs the Governor, by executive order, to promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this section;

NOW THEREFORE, pursuant to the authority vested in me by the Constitution of this State and N.C.G.S. 113A-104(c), IT IS HEREBY ORDERED:

Section 1. The eight members of the Coastal Resources Commission appointed by the Governor pursuant to N.C.G.S. 113A-104(b) (1) through (5), (9), and (11), shall be persons who do not derive any significant portion of their income from land

development, construction, real estate sales, or lobbying and do not otherwise serve as agents for development-related business activities.

- (A) For purposes of this section, the term "significant portion of their income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for the calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement, pension, or other similar arrangements.
- (B) For purposes of this section, the term "income" shall mean "gross income" as defined in N.C.G.S. 105-134.1(5).
- (C) For purposes of this section, the terms "persons deriving a significant portion of their income from land development, construction, real estate sales, or lobbying and do not otherwise serve as agents for development-related business activities" shall not include any department or agency of State Government.
- (D) For purposes of this section, a person does not derive income from land development, construction, real estate sales, or lobbying or as an agent for development related business activities where the person receives payments from a mutual fund or other diversified investment of which the person receiving the payments does not know the identity of the primary sources of income.

Section 2. The North Carolina Board of Ethics established pursuant to Executive Order Number 1 dated January 31, 1985, is hereby directed to prepare a suitable disclosure form to be completed by prospective Governor's appointees under N.C.G.S. 113A-104(c) and to be used by the Governor's Office in determining eligibility under Section 1 of this Executive Order. These completed forms shall be kept on file and open to public inspection by both the North Carolina Board of Ethics and the Governor's Office.

Section 3. Once a member is appointed, his or her Statement of Economic Interest is required to be filed with the North Carolina Board of Ethics pursuant to Executive Order Number 1 dated January 31, 1985, and shall be updated by the member on a regular basis.

Section 4. The Board of Ethics established pursuant to Executive Order Number 1 dated January 31, 1985, is hereby directed to monitor closely Statements of Economic Interest to determine continuing eligibility under Section 1 of this Executive Order.

Section 5. Pursuant to Section 2 of Session Laws 1989, c. 505, this Order shall not affect the terms of members who were serving on the Coastal Resources Commission on June 29, 1989, and are currently serving their unexpired terms.

Section 6. This Order shall become effective immediately.

Done in Raleigh, North Carolina, this the 28th day of
June, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 121
GOVERNOR'S MINORITY, FEMALE AND DISABLED-OWNED BUSINESSES
CONSTRUCTION CONTRACTORS ADVISORY COMMITTEE

It is my policy that the State of North Carolina shall enhance and promote construction contract opportunities for all of its citizens without regard to race gender or hardship.

Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. There is hereby established the Governor's Minority, Female and Disabled-Owned Businesses Construction Contractors Advisory Committee.

Section 2. Purpose. The purpose of the Committee is to serve as a technical advisory committee to the Governor in order to increase opportunity for minority, female and disabled-owned businesses to participate in the construction of public facilities.

Section 3. Duties. The Committee shall have the following duties:

- (A) provide expertise to the Governor and his Special Assistant for Minority Affairs on the subject of minority, female and disabled-owned businesses utilization on public work;
- (B) review problems minority, female and disabled-owned businesses encounter in becoming a competitive part of the construction industry and develop recommendations designed to resolve the problems;
- (C) review the implementation of minority, female and disabled-owned businesses plans by state agencies and where applicable, develop recommendations on modifications to existing plans that would increase the opportunities for minority, female and disabled-owned businesses to compete for state funded contracts and subcontracts; and
- (D) develop recommendations for assistance programs the State can make available to local governments in developing and implementing local minority, female and disabled owned businesses plans.

Section 4. Membership. The membership of the Committee shall be comprised of at least the following 15 members to be appointed by, and serve at the pleasure of, the Governor:

- (A) five members to be recommended by the Association of General Contractors;
- (B) five members to be recommended by the North Carolina Association of Minority Businesses; and
- (C) five members from the public at large.

Section 5. Chairperson. The Governor shall appoint a Chairperson from among the membership. The Chairperson shall serve at the pleasure of the Governor. The Chairperson shall coordinate the activities of the Committee.

Section 6. Meetings. Meetings shall be called by the Chairperson.

Section 7. Administrative Support. Administrative support will be provided by the Governor's Special Assistant for Minority Affairs.

Section 8. Reporting. The Chairperson shall report on the Committee's progress on a quarterly basis.

This order is effective the 11th day of July, 1990.


James G. Martin
Governor

ATTEST


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 122 ESTABLISHING THE GOVERNOR'S COUNCIL OF FISCAL ADVISORS

It is desirable that Governors have benefit of the combined counsel of those officials primarily responsible for the State's fiscal affairs. Therefore, to accomplish that end and pursuant to authority vested in me by the Constitution and by statute, it is ORDERED:

Section 1: There is established the Governor's Council of Fiscal Advisors whose membership shall consist of:

- (a) The State Treasurer
- (b) The State Auditor
- (c) The Executive Assistant to the Governor for Budget and Management
- (d) The Secretary of the Department of Revenue
- (e) The State Controller
- (f) The Governor's General Counsel

Section 2: The purpose of the Council shall be to consider and advise the Governor concerning the fiscal affairs of the State.

Section 3: (a) The Council shall meet in regular session with the Governor each quarter on such dates and at such times as the Governor directs and in special session with the Governor at the Governor's call.

In addition, the Council shall meet regularly without the Governor on such dates and at such times as the Council selects and in special session without the Governor at the call of the Executive Assistant to the Governor for Budget and Management.

(b) Council members shall attend Council meetings in person and not by surrogates.

Section 4: In addition to Council members, the following are invited to attend and participate in Council meetings as the Governor's invitees:

- (a) the Chief of Staff to the Governor,
- (b) the Deputy Director of the Budget,
- (c) a designee of the Lt. Governor,
- (d) the Director of Fiscal Research for the North Carolina General Assembly, or his designee.

Section 5: The Governor shall preside at all meetings of the Council at which he is present. The Executive Assistant to the Governor for Budget and Management shall preside at all meetings of the Council at which the Governor is not present. Agendas for all meetings of the Council shall be prepared by the Executive Assistant to the Governor for Budget and Management and distributed to attendees in advance of the meetings.

Section 6: Council members who are not members of the Council of State are invited to attend meetings of the Council of State as invitees of the Governor. Council members who are not members of the Advisory Budget Commission are invited to attend meetings of the Advisory Budget Commission as invitees of the Governor.

Section 7: The State Office of Budget and Management shall provide administrative support to the Council.

Section 8: Council members shall serve without compensation or reimbursement for expenditures incurred by them in attending council meetings.

Section 9: This executive order is effective immediately and shall remain in effect until terminated by the undersigned or a successor.

Done in Raleigh, North Carolina, this 17th day of July, 1990.

James H. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 123 UNIFORM FLOODPLAIN MANAGEMENT POLICY

WHEREAS, the National Flood Insurance Program incorporated at 42 U.S.C. 4001-4128 authorizes the establishment of floodplain management regulations applicable to state-owned properties; and

WHEREAS, Governor James B. Hunt, Jr., established a Uniform Floodplain Management Policy for State agencies by Executive Order Number 31 signed on February 1, 1979, to provide for sound management of state-owned properties as they relate to potential flood hazards; and

WHEREAS, the federal regulations for floodplain management, 44 C.F.R. Chapter 1, Parts 59 through 77 (1989), were revised making Executive Order Number 31 outdated; and

WHEREAS, there is a substantial need to update the Uniform Flood Management Policy in accordance with the revisions made in 44 C.F.R. Chapter 1, Parts 59 through 77 (1989);

NOW, THEREFORE, IT IS HEREBY ORDERED:

Section 1. The Uniform Floodplain Management Policy established by Executive Order Number 31, February 1, 1979, is hereby rescinded.

Section 2. I hereby establish a new Uniform Floodplain Management Policy which accurately reflects all authority, responsibilities and functions of State agencies.

Section 3. The Department of Administration shall administer a Uniform Floodplain Management Policy for State Agencies. By agreement between the Department of Transportation and the Department of Administration, the Department of Transportation shall work directly with the Federal Department of Transportation and the Federal Emergency Management Agency to apply appropriate standards and management to comply with the Floodplain Management Policy relevant to highway construction within floodplains. This order shall apply to those lands as defined in Chapters 143 and 146 of the North Carolina General Statutes and including but not limited to public waterways, marshes, Estuarine waters, and to privately-owned land and improvements which are leased to the State of North Carolina or any of its agencies. This order in no way affects municipal or county zoning authority pursuant to General Statutes Chapter 160A, Article 19, Part 3 and Chapter 153A, Article 18, Part 3; however, in cases of conflict between Municipal and County Floodway Regulations pursuant to Chapter 143, Article 2, Part 6 and the provisions set forth in this order, the Department of Administration shall investigate the area of conflict and make appropriate determinations to comply with the intent of this order.

Section 4. To encourage State agencies to work within the existing statutes of the State of North Carolina to establish a Uniform Floodplain Management Policy, the following statutes and codes, and revisions thereto, though not repeated herein, are hereby incorporated by reference:

- A. Chapter 58, Section 193, Commissioner of Insurance - Required to Inspect State Property
- B. Chapter 113, Article 1, Estuarine Waters and State Owned Lakes
- C. Chapter 113A, Article 1, Environmental Policy Act
- D. Chapter 113A, Article 4, Sedimentation Pollution Control Act of 1973
- E. Chapter 113A, Article 7, Coastal Area Management Act of 1974
- F. Chapter 113A, Article 7A, Coastal & Estuarine Water Beach Access Program
- G. Chapter 113A, Article 9, Land Policy Act
- H. Chapter 143, Article 1, Executive Budget Act
- I. Chapter 143, Article 8, Public Building Contract
- J. Chapter 143, Article 36, Department of Administration
- K. Chapter 143, Article 21, Section 214.1 Water Quality Standards
- L. Chapter 143, Article 21, Section 215, Effluent Standards and Limitations
- M. Chapter 143, Article 21, Part 6, Floodway Regulations
- N. Chapter 143B, Article 9, Part 3, N.C. Capital Planning Commission

- O. Chapter 146, Articles 5, 6 and 7 Acquisition and Disposition of State Lands
- P. Chapter 153A, Article 18, Part 3, County Zoning Authority
- Q. Chapter 160A, Article 19, Part 3, Local Zoning Authority
- R. North Carolina State Building Code 1978 Edition and amendments
- S. PL 92-500 Pollution Control Act of 1972
- T. 44 CFR Parts 59 - 76, NFIP and Related Regulations
- U. Title 16 USCS Chapter 33, Coastal Zone Management
- V. Title 33 USCS Chapter 15, Flood Control
- W. Title 42 USCS Chapter 50, Flood Insurance

Section 5. Definitions. It is not the intent of this order to create any new terms or phrases. The terms and phrases used herein shall be interpreted to conform with existing common usage, statutes, or other applicable regulations as follows:

1. "Appeal" means a request from a review of the local administrator's interpretation of any provision of this order.
2. "Addition (to an existing building)" means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.

3. "Area of shallow flooding" means a designated A0 or V0 Zone on a community's Flood Insurance Rate Map (FIRM) with base depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.
4. "Area of special flood hazard" is the land in the floodplain within a community subject to a one percent or greater chance of being equaled or exceeded in any given year.
5. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.
6. "Basement" means that lowest level or story which has its floor subgrade on all sides.
7. "Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. A breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. A wall with loading resistance of more than 20 pounds per square foot requires a professional engineer or architect's certificate.
8. "Building" means any structure built for support, shelter, or enclosure for any occupancy or storage.

9. "Coastal High Hazard Area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.
10. "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
11. "Elevated building" means a non-basement building (a) built, in the case of a building in Zones A1-A30, AE, A, A99, A0, AH, B, C, or X to have the top of the elevated floor, or in the case of a building in Zones V1-V30, VE, or V to have the bottom of the lowest horizontal structural member of the elevated floor above the ground by means of pilings, columns (posts and piers), shear walls parallel to the flow of water and, (b) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In the case of Zones A1-A30, AE, A, A99, A0, AH, B, C, and X, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-V30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of

"elevated building", even though the area below is enclosed by means of breakaway walls if the breakaway walls meet the standards of Section 8, Subsection E of this order.

12. "Existing manufactured home park or manufactured home subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of this order.
13. "Expansion to an existing manufactured home park or subdivision" means the preparation of the additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).
14. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (A) the overflow of inland or tidal waters; and
 - (B) the unusual and rapid accumulation of runoff of surface waters from any source.
15. "Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency

Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

16. "Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.
17. "Flood Insurance Study" is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.
18. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
19. "Floor" means the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.
20. "Functionally dependant facility" means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship

repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

21. "Highest Adjacent Grade" means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.
22. "Historic Structure" means any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a State inventory of historic places; (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified (1) by an approved state program as determined by the Secretary of the Interior, or (2) directly by the Secretary of Interior in states without approved programs.
23. "Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or

divert the flow of water so as to provide protection from temporary flooding.

24. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this order.
25. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".
26. "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
27. "Mean Sea Level" means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this order, the term is synonymous with National Geodetic Vertical Datum (NGVD).

28. "National Geodetic Vertical Datum (NGVD)" as corrected in 1929 is a vertical control used as a reference from establishing varying elevations within the floodplain.
29. "New construction" means structures for which the "start of construction" commenced on or after the effective date of this order and includes any subsequent improvements to such structures.
30. "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after the effective date of this order.
31. "Nonconforming building or use" means any legally existing building or use which fails to comply with the provisions of the order.
32. "Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and over-topping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

33. "Recreational vehicle" means a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and, (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping travel, or seasonal use.
34. "Reference feature" is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal highwater line or the seaward line of permanent vegetation if highwater line cannot be identified.
35. "Remedy a violation" means to bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the order or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.
36. "60-year setback" means a distance equal to 60 times the average annual long term recession rate at a site, measured from the reference feature.

37. "Start of construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the state of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

38. "Structure" means, for floodplain management purposes, a walled and roofed building, a manufactured home, including a gas or liquid storage tank, or other man-made facilities or infrastructures that are principally above ground.
39. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement".
40. "Substantial improvement" means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) any project of improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or, (2) any alteration of a historic structure, provided that the alteration will not

preclude the structure's continued designation as a historic structure.

41. "Substantially improved existing manufactured home park or subdivision" means where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.
42. "Variance" is a grant of relief to a person from the requirements of this order which permits construction in a manner otherwise prohibited by this order where specific enforcement would result in unnecessary hardship.
43. "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as the documentation is provided.
44. "Zone of imminent collapse" means an area subject to erosion adjacent to the shoreline of an ocean, bay or lake and within a distance equal to 10 feet plus 5 times the average annual long term erosion rate for the site, measured from the reference feature.

Section 6. Location of Regulatory Floodway and Floodplain
undaries. Determination of boundaries for the regulatory

floodway, the 100-year floodplain, and the coastal high hazard areas shall be established by using the latest hydrologic maps and engineering data obtainable.

When Federal Emergency Management Agency (FEMA) Flood Hazard Boundary (FHBM), Floodway, Flood Insurance Rate Maps (FIRM) or Flood Insurance Study Date are available, they shall be the primary source of such hydrologic data.

Section 7. Floodplain Development Permit and Certification Requirements. Application for a Floodplain Development Permit shall be made to the Department of Administration on forms furnished by them prior to any development activities. The Floodplain Development permit shall include, but not be limited to plans in duplicate drawn to scale showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; a copy of the Flood Hazard Boundary/Floodway or Flood Insurance Rate Map showing the site location and panel number, and the location of fill materials, storage areas and drainage facilities. Specifically, the following information is required:

A. Where base flood elevation data is provided in accordance with Section 8, Subsection L, the application for a Floodplain Development Permit within the Zone A on the Flood Insurance Rate Map shall show:

- (1) the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and

(2) if the structure has been floodproofed in accordance with Section 10 Subsection B, the elevation (in relation to mean sea level) to which the structure was floodproofed.

- B. Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor at least two (2) feet above the highest adjacent grade.
- C. Where any watercourse will be altered or relocated as a result of proposed development, the application for a development permit shall include: a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located on both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation.
- D. When a structure is floodproofed the applicant shall provide a certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the flood-proofing criteria in Section 10, Subsection B.
- E. A floor elevation or flood-proofing certification is required after the lowest floor is completed, or in instances where the structure is subject to the regulations applicable to Coastal High Hazard Areas,

after placement of the horizontal structural members of the lowest floor. Within twenty-one (21) calendar days of the establishment of the lowest floor elevation, or flood-proofing by whatever constructions means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the Department of Administration a certification of the elevation of the lowest floor, or floodproofed elevation, or the elevation of the bottom of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the twenty-one (21) day calendar and prior to submission of the certification shall be at the permit holder's risk. The Department of Administration shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required

hereby shall be cause to issue a stop work order for the project.

- F. Upon receipt of the permit applications, the Secretary of the Department of Administration or his/her designee will review the application with other departments, and will (1) deny the permit application; or (2) issue a temporary permit for further development of the project. If a temporary permit is issued, the applicant may proceed with development of detailed planning and specifications, such as plans and specifications to be submitted to the Department of Administration for periodic review.
- G. Upon final approval of the detailed plans and specifications, the Department of Administration shall issue a permit for construction. In granting or denying permits, the Department shall be guided by the standards, limitation and requirements set forth in this order.
- H. Certificate of Compliance. Before the facility is occupied, the owning agency shall issue or cause to be issued a certificate of compliance stating that the subject project complied with all of the provisions of this order. The certificate shall be prepared by a professional engineer, architect or land surveyor, or a combination thereof, if so required by the aforementioned statutes.

- I. North Carolina Department of Insurance Approval. When the project is a structure normally covered by insurance, the development permit under Section 7, will not be issued until the project is approved by the Department of Insurance for full coverage.
- J. Appeals, Adjustments, Amendments and Violations. Appeals, Adjustments, Amendments and Violations shall be considered and determined as provided in the aforementioned statutes and in accordance with the rules and regulations governing the Department of Administration adopted pursuant to the Administrative Procedures Act.

Section 8. Duties and Responsibilities of the Department of Administration. Duties of the Department of Administration shall include, but not be limited to:

- A. Review all development permits to assure that the permit requirements of the order have been satisfied.
- B. Advise permittee that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of such permits be provided and maintained on file with the development permit.
- C. Notify adjacent communities and the N.C. Department of Crime Control and Public Safety, Division of Emergency Management, and the State Coordinator's Office for the National Flood Insurance Program prior to any alteration

or relocation of a watercourse and submit such notification to the Federal Emergency Management Agency.

- D. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- E. Prevent encroachments within floodways unless the certification and flood hazard reduction provision of Sections 7 thru 11, are met.
- F. Obtain the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Section 7, Subsection E.
- G. Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed, in accordance with Section 7, Subsection E.
- H. In Coastal Hazard Areas, certification shall be obtained from a registered professional engineer or architect that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.
- I. In Coastal High Hazard Areas, review plan for adequacy of breakaway walls in accordance with Section 8, Subsection G, Paragraph 8.
- J. When flood-proofing is utilized for a particular structure, obtain certifications from a registered

professional engineer or architect in accordance with Section 10, Subsection B.

- K. Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Department of Administration shall make the necessary interpretation, upon recommendation by the Office of State Construction. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this order.
- L. When base flood elevation data has not been provided in accordance with Section 6, obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, including data developed pursuant to Section 12, Subsection D, in order to administer the provisions of this order.
- M. Make on site inspections in accordance with the aforementioned statutes.
- N. Serve notices of violations, issue stop work orders, revoke permits and take corrective actions in accordance with the aforementioned statutes.
- O. Maintain all records pertaining to the administration of this order and make these records available for public inspection.

Section 9. Provisions for Flood Hazard Reduction -
General Standards. In all areas of special flood hazard the following provisions are required:

- A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- B. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- C. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages;
- D. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- E. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- F. New and replacement sanitary sewer systems shall be located and constructed to minimize infiltration of flood waters into the systems and discharges from the systems into flood waters;
- G. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them, during flooding; and

- H. Any alteration, repair, reconstruction or improvement to a structure which is in compliance with the provisions of this order, shall meet the requirements of "new construction" as contained in this order.
- I. Non-conforming building or uses. Non-conforming buildings or uses may not be enlarged, replaced or rebuilt unless such enlargement, replacement or reconstruction is accomplished in conformance with the provisions of this order. Provided, however, nothing in this order shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this order and located totally or partially within the Floodway Zone, provided that the bulk of the building or structure below base flood elevation in the Floodway Zone is not increased and provided that such repair, reconstruction or replacement meets all the other requirements of this order. A structure abandoned for twelve (12) months or more cannot be reoccupied until it is improved and brought into compliance with this order.

Section 10. Provisions for Flood Hazard Reduction - Specific Standards. In all areas of special flood hazard where base flood elevation data has been provided, as set forth in Section 6 or Section 8, Subsection L, the following provisions are required:

- A. Residential Construction. New construction or substantial improvement of any residential structure

(including manufactured homes) shall have the lowest floor, including basement, elevated no lower than two (2) feet above the base flood elevation. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided.

- B. Non-Residential Construction. New construction or substantial improvement of any commercial, industrial, or non-residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than two (2) feet above the level of the base flood elevation.

Structures located in A-Zones may be floodproofed in lieu of elevation provided that for:

- (1) Dry Floodproofing. All areas of the structure below the required elevation are water tight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this Section are satisfied. Such certification shall be provided to the official as set forth in Section 7, Subsection E; or,
- (2) Wet Floodproofing. A professional engineer or architect shall certify in accordance with Section

7, Subsection E, that the portions of any structure below the regulatory base flood elevation comply with alternate wet floodproofing methods that are acceptable to FEMA as variances to the essentially dry floodproofing measures required in Section 10, Subsection B (1) above. Provided said alternate methods comply with the standards set forth in the FEMA Technical Standards Bulletin (No. 85-1), and that such measures are adequate to withstand the flood depth pressures, velocities, impact and uplift forces and other factors associated with the Base Flood occurrence at the location of the structures and that attendant utility and sanitary facilities are floodproofed and that the requirements for the issuance of the Variance comply with Section 14 of this order.

C. Manufactured Homes.

- (1) Manufactured homes that are placed or substantially improved on sites (a) outside a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or, (d) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home

is elevated no lower than two (2) feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- (2) Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of Section 10, Subsection C (1) of this ordinance must be elevated so that the lowest floor of the manufactured home is elevated no lower than two (2) feet above the base flood elevation, and be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement.

- (3) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse, or lateral movement in accordance with the Regulations for Mobile Homes and Modular Housing adopted by the Commissioner of Insurance pursuant to N.C.G.S. 143.143.15. Additionally, when the elevation would be met by an elevation of the chassis at least 36 inches or less above the grade at the sight, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is

above 36 inches in height and engineering certification is required.

- (4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas.

This Plan shall be filed with and approved by the Department of Administration and the Department of Crime Control and Public Safety.

- D. Recreational Vehicles. A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions. Recreation vehicles placed on sites shall either:

- (1) be on site for fewer than 180 consecutive days,
- (2) be fully licensed and ready for highway use, or
- (3) meet the requirements of Section 7, 9 and 10 (subsection C).

- E. Elevated Buildings. New construction or substantial improvements of elevated buildings that include fully enclosed areas that are usable solely for the parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to preclude finished living space and be designed to automatically equalize hydrostatic flood

forces on exterior walls by allowing for the entry and exit of floodwaters.

- (1) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following criteria:
 - (a) provide a minimum of two (2) openings having a net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (b) the bottom of all openings shall be no higher than one foot above grade; and,
 - (c) openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- (2) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairwell or elevator).
- (3) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

F. Temporary Structures. Prior to the issuance of a development permit, for a temporary structure, the following requirements must be met:

- (1) All applicants must submit to the local administrator a plan for the removal of such structure(s) in the event of a hurricane or flash flood notification. The plan must include the following information:
 - (a) the name, address and phone number of the individual responsible for the removal of the temporary structure;
 - (b) the time frame prior to the event at which a structure will be removed;
 - (c) a copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and
 - (d) designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.
- (2) The above information shall be submitted in writing to the local administrator for review and written approval.

G. Accessory Structure. When accessory structures (sheds, detached garages, etc.) with a value of \$3,000 or less, are to be placed in the floodplain the following criteria shall be met:

- (1) Accessory structures shall not be used for human habitation;

- (2) Accessory structures shall be designed to have low flood damage potential;
- (3) Accessory structures shall be firmly anchored in accordance with Section 9, Subsection A; and
- (4) Service facilities such as electrical and heating equipment shall be elevated in accordance with Section 9, Subsection D.

- H. Floodways. Located within areas of special flood hazard established in Section 6, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of flood waters which carry debris and potential projectiles and has erosion potential. The following provisions shall apply within such areas:
- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
 - (2) If Section 10, Subsection F, Paragraph 1, is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 9 thru 13 of this order.

- (3) No manufactured homes shall be permitted except in existing manufactured home parks or subdivisions. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided that the anchoring standards of Section 9, Subsection B and the elevation standards of Section 8 (C) are met.

I. Coastal High Hazard Areas (V-Zones). Located within the areas of special flood hazard established in Section 6, are areas designated as coastal high hazard areas. These areas have special flood hazards associated with wave wash. The following provisions shall apply within such areas:

- (1) All buildings or structures shall be located landward of the first line of stable natural vegetation and comply with all applicable CAMA setback requirements.
- (2) All buildings or structures shall be elevated so that the bottom of the lowest supporting horizontal member (excluding pilings or columns) is located no lower than two (2) feet above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Open lattice work or decorative screening may be permitted for aesthetic purposes only and must be designed to wash away in the event

of abnormal wave action and in accordance with Section 10, Subsection G, Paragraph 8.

- (3) All buildings or structures shall be securely anchored on pilings or columns.
- (4) All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. The anchoring and support system shall be designed with wind and water loading values which equal or exceed the 100 year mean recurrence interval (one percent annual chance flood).
- (5) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in Section 10, Subsection G, Paragraphs (2), (3) and (4) of this order.
- (6) There shall be no fill used as structural support. Non-compacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, (thereby rendering the building free of obstruction prior to generating excessive loading forces, ramping effects, or wave deflection. The Department of Administration shall approve design plans for landscaping/aesthetic fill only after the applicant has provided an analysis by an engineer,

architect, and/or soil scientist which demonstrates that the following factors have been fully considered:

- (a) particle composition of fill material does not have a tendency for excessive natural compaction;
 - (b) volume and distribution of fill will not cause wave deflection to adjacent properties; and
 - (c) slope of fill will not cause wave run-up or ramping.
- (7) There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage.
- (8) Lattice work or decorative screening shall be allowed below the base flood elevation provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are to be used and provided the following design specifications are met:
- (a) no solid walls shall be allowed;
 - (b) material shall consist of wood or mesh screening only;
 - (c) design safe loading resistance of each wall shall be not less than 10 nor more than 20 pounds per square foot; or

- (d) if more than 20 pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components during the base flood event. Maximum wind and water loading values to be used in this determination shall each have one percent chance of being equalled or exceeded in any given year (100-year mean recurrence interval).
- (9) If aesthetic lattice work or screening is utilized such enclosed space shall not be designed to be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises.
- (10) Prior to construction, plans for any structures that will have lattice work or decorative screening must be submitted to the Department of Administration for approval.

(11) Any alteration, repair, reconstruction or improvement to a structure shall not enclose the space below the lowest floor except with lattice work or decorative screening, as provided for in Section 10, Subsection G, Paragraphs (8) and (9).

(12) No manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Section 9, Subsection (B) and the elevation standard of Section 10, Subsection C are met.

Section 11. Standard for Streams Without Established Base Flood Elevations and/or Floodways. Located within the areas of special flood hazard established in Section 6 are small streams where the Federal Emergency Management Agency has not provided base flood data and where floodways have not been identified. The following provisions shall apply within such areas:

- A. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of thirty feet from the top of bank, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

- B. If Section 11, Subsection A is satisfied and base flood elevation data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable flood hazard provisions of Section 9 thru 13 and shall be elevated or floodproofed in accordance with elevations established in accordance with Section 8, Subsection L. When base flood elevation data is not available from a federal, state or other source, the lowest floor, including basement, shall be elevated at least two (2) feet above the highest adjacent grade.

Section 12. Standard for Subdivision Proposals.

- A. All subdivision proposals shall be consistent with the need to minimize flood damage;
- B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and,
- D. Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of fifty lots or five acres.

Section 13. Standard for Areas of Shallow Flooding (AO Zones). Located within the areas of special flood hazard established in Section 6 are areas designated as shallow

flooding. These areas have special flood hazards associated with base flood depths of one to three feet (1'-3') where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions shall apply within such areas:

A. All new construction and substantial improvements of non-residential structures shall:

- (1) have a lowest floor, including basement, elevated in the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two (2) feet above the highest adjacent grade; or,
- (2) be completely floodproofed together with attendant utility and sanitary facilities or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Section 14. Variance Procedures.

A. The Department of Administration, Office of State Construction, the Department of Insurance, the North Carolina Division of Emergency Management, NFIP State Coordinator, and the Secretary of the Department of Administration, hereafter referred to as the appeal

board, shall hear and must concur on requests for variances from the requirements of this order.

- B. Any person aggrieved by the decision of the appeal board or any taxpayer may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- C. Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- D. Variances may only be granted for Historic Structures and for wet Floodproofing of Non-Residential Structures. No variances may be granted for Residential construction.
- E. In passing upon such applications, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this order, and:
 - (1) the danger that materials may be swept onto other lands to the injury of others;
 - (2) the danger to life and property due to flooding or erosion damage;

- (3) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) the importance of the services provided by the proposed facility to the community;
- (5) the necessity to the facility of a waterfront location, where applicable;
- (6) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) the compatibility of the proposed use with existing and anticipated development;
- (8) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) the safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- (11) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

- F. Upon consideration of all the factors listed above and the purposes of this order, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this order.
- G. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- H. Conditions for Variances:
- (1) Variances may not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - (2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (3) Variances shall only be issued upon (i) a showing of good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship; and, (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (4) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation

to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.

- (5) The local administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

Section 15. The Department of Insurance and the Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator's Office of the National Flood Insurance Program shall assist in jointly administering the provisions of this order under applicable statutory provisions.

Section 16. Abrogation and Greater Restrictions. This order is not intended to repeal, abrogate, or impair any existing easements, covenants or deed restrictions. However, where this order and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section 17. This order shall become effective immediately.

Done in Raleigh, North Carolina this the 24th day of July,
1990.

James S. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



NUMERICAL INDEX TO SENATE AND HOUSE BILLS

1989 GENERAL ASSEMBLY REGULAR SESSION 1990

Ratified Number refers to the Session Law Chapter number except when preceded by an R, in which case it refers to the Resolution number.

SENATE BILLS

<i>S.B.</i>	<i>Ratified Number</i>	<i>S.B.</i>	<i>Ratified Number</i>	<i>S.B.</i>	<i>Ratified Number</i>
58	888	1352	805	1438	R61
113	1009	1354	881	1439	997
132	899	1358	867	1443	868
155	951	1361	814	1446	1042
184	889	1362	848	1447	990
300	1020	1363	1005	1448	1049
336	915	1365	970	1449	975
382	900	1371	836	1450	1056
423	1053	1375	1026	1461	918
439	1070	1376	849	1462	919
463	865	1377	R37	1463	920
465	916	1378	954	1467	1029
498	1054	1380	1027	1475	1030
499	1021	1382	938	1478	942
524	1040	1383	955	1479	843
647	821	1384	956	1481	1007
673	968	1392	939	1486	1008
734	995	1398	971	1487	901
766	996	1400	972	1494	943
774	1071	1401	940	1496	869
810	952	1402	1028	1497	921
817	1022	1404	973	1498	R42
896	842	1406	850	1499	1010
917	1075	1408	941	1506	1031
928	937	1412	1055	1509	958
951	1041	1414	974	1512	902
994	1023	1416	1048	1520	903
1013	953	1419	957	1521	904
1084	1002	1421	917	1522	905
1337	1024	1426	1066	1523	870
1340	969	1427	1074	1527	922
1345	1025	1430	R65	1534	944
1346	835	1434	1006	1535	976
1351	866	1436	R48	1536	906

Index to Session Laws

<i>S.B.</i>	<i>Ratified Number</i>	<i>S.B.</i>	<i>Ratified Number</i>	<i>S.B.</i>	<i>Ratified Number</i>
1560	R49	1607	R47	1619	R66
1575	1057	1608	R44	1620	1012
1579	1072	1610	R58	1621	R69
1584	1032	1611	R73	1622	977
1586	945	1613	R68	1624	1033
1587	946	1614	R63	1625	R71
1588	1073	1615	1058	1629	R72
1591	851	1616	959	1630	R74
1598	1077	1617	960	1631	1082
1604	R62	1618	1011	1632	R76
1605	R43				

HOUSE BILLS

<i>H.B.</i>	<i>Ratified Number</i>	<i>H.B.</i>	<i>Ratified Number</i>	<i>H.B.</i>	<i>Ratified Number</i>
1	R35	2059	838	2152	912
250	815	2060	807	2153	855
267	1081	2061	829	2158	876
285	978	2063	808	2159	811
296	1078	2064	819	2160	894
345	991	2065	837	2161	833
351	890	2067	981	2168	930
416	822	2073	989	2170	895
603	1050	2074	908	2171	896
606	992	2075	874	2173	1034
608	871	2076	852	2174	R39
685	979	2079	893	2177	R40
688	825	2080	883	2184	897
736	844	2081	1016	2185	824
755	872	2084	925	2186	877
805	816	2085	846	2188	856
806	1043	2087	875	2189	931
807	817	2091	909	2190	1017
899	993	2092	926	2191	847
929	923	2094	927	2193	932
950	1044	2096	R50	2194	R45
992	823	2098	R36	2195	857
1019	803	2099	910	2196	858
1030	826	2100	884	2197	961
1147	891	2101	947	2199	812
1177	1045	2111	820	2201	878
1205	1013	2112	911	2207	1068
1223	1014	2113	839	2208	834
1241	907	2114	885	2213	1062
1269	1067	2115	998	2220	879
1291	1015	2116	830	2221	886
1297	980	2117	1060	2222	887
1314	1059	2118	804	2227	962
1427	892	2119	928	2228	859
1679	1003	2120	853	2230	R41
1994	1080	2121	929	2234	1035
2016	1079	2123	854	2235	1063
2024	R64	2124	809	2240	R51
2040	882	2128	1061	2241	1018
2041	924	2129	982	2242	1019
2044	818	2131	810	2243	860
2045	873	2132	983	2245	933
2047	845	2133	840	2246	1046
2048	806	2134	831	2247	913
2050	827	2135	832	2249	1036
2053	R38	2136	999	2254	1037
2054	828	2138	984	2256	861

Index to Session Laws

<i>H.B.</i>	<i>Ratified Number</i>	<i>H.B.</i>	<i>Ratified Number</i>	<i>H.B.</i>	<i>Ratified Number</i>
2257	1069	2287	935	2384	R54
2258	985	2288	994	2385	R55
2260	1004	2297	1038	2386	R46
2261	862	2303	R52	2387	R56
2263	1051	2321	1000	2388	R57
2267	948	2331	964	2391	1052
2268	934	2335	936	2392	R59
2269	949	2338	965	2394	1047
2270	841	2341	1064	2396	R60
2272	863	2349	1065	2398	988
2273	864	2350	966	2401	914
2278	986	2353	987	2402	1001
2280	963	2356	967	2403	898
2281	950	2361	R53	2408	R67
2282	880	2375	1039	2409	R70
2284	1076	2377	813	2412	R75

INDEX TO SESSION LAWS
1989 GENERAL ASSEMBLY
EXTRA SESSION 1989

A

Chapter

Adjournment sine die	1
----------------------------	---

H

Hazardous Waste—approval of entry by the Governor into an interstate agreement for the management of hazardous waste	1
--	---

INDEX TO SESSION LAWS
1989 GENERAL ASSEMBLY
EXTRA SESSION 1990

A

Chapter

Adjournment sine die	1
----------------------------	---

P

Prisons—Prison Population Stabilization Act amended to raise the population cap	1
--	---

INDEX TO SESSION LAWS

1989 GENERAL ASSEMBLY

REGULAR SESSION 1990

Suggestions For Use: When looking for local legislation, look under the name of the particular county or municipality in which you are interested. When looking for a law that amends or repeals a certain session law, look under "Laws Amended or Repealed." When looking for general or special appropriations, look under "Appropriations" or the name of the agency or subject. General and special appropriations are contained in Chapter 1066 (Current Operations Appropriations) and Chapter 1074 (Capital Improvement Appropriations) of the 1989 Session Laws (Regular Session 1990). Section numbers appear in parentheses immediately following chapter references.

A

	<i>Chapter</i>
Abortion —State Abortion Fund limitations	1066(79)
Acquired Immune Deficiency Syndrome (AIDS) —	
Drug reimbursement eligibility standards	1066(44)
Education, counseling, and testing block grant funds	1066(6)
Administration, State Department of:	
Appropriations:	
Capital improvements:	
Art Museum landscaping	1074(2)
Asbestos removal reserve	1074(2)
Education Building furnishings	1074(2)
General Fund	1074(2), (3)
Government Complex new steam plant	1074(2)
Indian Cultural Center	1074(2), (18)
Natural Science Museum planning	1074(3)
New Revenue Building	1074(2)
Veterans Cemetery	1074(2)
Current operations:	
Council of Government funds reduced	1066(14)
Domestic violence program	
reductions prohibited	1066(16)
General Fund	1066(3)
Indian Housing Authority not treated as	
State agency to qualify for federal assistance	1066(15)
N.C. Coalition Against Domestic Violence grant	1066(13)
N.C. Fund for Children block grant funds	1066(6)
Raleigh downtown parking facility fee deposits	
with State Treasurer to offset appropriation	1066(17)
Rape crisis program reductions prohibited	1066(16)
Contracts and Purchases —see that heading	

Administration, State Department of:—continued	
Internship Council allocation of summer interns	900
Report—disadvantaged business participation in public procurement contracts	1051
Salaries and Benefits—see that heading	
Study—Open Government Through Public Telecommunications Study Commission created ...	1078(VI)
Administrative Hearings, Office of—funds	1066(3)
Administrative Rules—handicapped education	
safeguard activities by Department of Environment, Health, and Natural Resources exempt from administrative hearings	1004(36); 1075(4)
Administrative Rules Review Commission:	
Appointments	1038
Appropriations	1066(3)
Adoption—probationary time between interlocutory decree and final order for private adoptions	
	977
Advertising:	
Economic development publications	1066(55)
Egg promotion tax for processed eggs	1001
Industrial promotional advertising	1066(57)
School instructional material selection procedures	1074(23)
Study—school instructional materials containing advertising	1074(23)(d)
Travel and Tourism promotional advertising funds ...	1074(36)
Aging—see Older Adults	
Agriculture:	
Agricultural Finance Authority re-established	1000; 1074(32)
Appropriations:	
Capital improvements:	
Agriculture programs	1074(3)
Agronomics lab	1074(2)
Piedmont Triad Market	1074(2)
Southeastern Farmers Market	1074(2), (3)
Charlotte garden center building	1074(2)
Mountain Research Station building	1074(2)
NCSU agriculture programs	1074(3)
Watercraft museum	1074(2)
Western North Carolina Agricultural Center land	1074(2)
Current operations:	
Agricultural Extension Service	1066(3)
Agricultural Research Service	1066(3)
Raleigh Farmers Market	1074(7)
Reductions	1066(3)
Strawberry marketing and research grant	1074(6)
State aid	1066(3); 1074(6)
Egg promotion tax for processed eggs	1001

Agriculture:—continued

Food processing by-product designations	880
Ice sales tax exemption	1068
Migrant housing inspection program funds	1066(61)
Strawberry Assessment Act	1027
Study—food processing by-product recycling	880
Technical amendment	1024(20)

Ahoskie, Town of—motor vehicle tax increase	893
--	------------

Airports—see Aviation**Alamance County:**

Burlington, City of—see that heading	
Elon College, Town of—see that heading	
Greenlevel, Town of—see that heading	
Mebane, City of—see that heading	

Alarm Systems:

DMV law enforcement vehicle bells and sirens	1020
Edenton smoke detectors in residential dwelling units	829
EMS support vehicle lights and sirens	1020
Fire sprinkler contractor licensure requirements	842, 978
Utilities Commission inspector vehicles not required to be equipped with bells and sirens	1020

Alcoholic Beverages:

ABC law technical amendment	1024(5)
Driving While Impaired (DWI)—see that heading	
Substance Abuse—see that heading	
Tax distributions to local governments	813; 1066(11)

Alleghany County—solid waste fee collection	905
--	------------

Ambulances—Cleveland County unlawful ambulance requests	834
--	------------

Andrews, Town of—annexation ordinance repealed	990
---	------------

Animals:

Dangerous dogs—precautions, penalties, liability	1023
Dare County leash law	963

Annexation:

Andrews annexation ordinance repealed	990
Black Mountain corporate limits reduced to correct error	838
Cherokee County recreation and security service districts	1049
Durham municipal boundary legal description amended	841
Durham County metes and bounds property description amended	841
Garner voluntary satellite annexations	872
Inventory tax reimbursements for certain areas	1066(29)
Leland annexation repealed	961
Long View annexation of certain described property	1019
Randolph County rural fire protection districts	993
Statesville voluntary satellite annexation limitations	882
Trent Woods annexation of certain described territory	947

Annexation:—continued

Vested rights ordinances	996
Wake Forest voluntary satellite annexation limitations	882

Anson County:

Fox seasons established	879
Land condemnation/acquisition by local governments outside county requires consent of commissioners	1061
Solid waste fee collection	1017

Appointments:

Administrative Rules Review Commission	1038(18)
Agricultural Finance Authority re-established 1000, 1074(32)	
Art in State Buildings Committee membership	1024(23)(b)
Charlotte housing authority terms	835
Cherokee County recreation and security service district board of directors	1049
Craven County airport authority staggered terms	1046
Crematory Authority established	988
Drainage commissioner selection procedures modified	959
Durham County public defender	1066(127); 1074(16)
Electrolysis Examiners Board	1033
Elizabeth City-Pasquotank County airport authority membership increased	860
Greenville parking authority commissioners	912
Guardian ad litem appointment provisions clarified	851
Handicapped Children from Birth to Five Years of Age, Interagency Coordinating Council for	1003
Home and Community Care Advisory Committee	1004(57); 1075(7)
Hospital and Medical Benefits, Committee on Employee	1038(19.1)
Law Enforcement Officers' Benefit and Retirement Fund	1024(23)(a)
Macon County airport authority	955
Plumbing, Heating, and Fire Sprinkler Contractors Board of Examiners	842, 978
President of the Senate—various boards and commissions	1048
Public defender appointment procedure changed	1074(16)
Radiation Protection Commission membership	1004(41)
Real Estate Appraisal Board	827(8), (13)
Rescue Squad Workers' Relief Fund Board of Trustee appointments	1066(33)
Senate Pensions and Retirement Committee— President Pro Tempore membership not required	899
Sentencing and Policy Advisory Commission	1076
Speaker—various public offices	1038
State Ports Authority membership and terms	1072
Statesville city clerk and city treasurer	855
Studies—see that heading	

Appointments:—continued

Teaching Fellows Commission	1038(19)
Wastewater Treatment Plant Operators Certification	
Commission sanitary sewage system representation	850

Appropriations: **Capital improvements:**

Additional appropriations for capital projects	1074(3)
Amounts delayed or reverted	1074(2)
Clean water program funds	1074(2)–(3), (14)–(15)
Contingent appropriations	1074(4)
General Fund	1074(2), (3)
Highway Fund	1074(8)
Nonrecurring operating appropriations	1074(5)
Nonrecurring State aid	1074(6)
Projects on delayed status	1074(9)
Recurring expenses	1074(7)
Repair and renovation reserve funds	1074(11)
Restrictions on expenditures	1074(10)(a)
Sequestration of funds to non-State agencies	1074(13)

Current operations:

Accounting system reserve	1066(3)
Block grants, federal	1066(6)
Budget line items, transfers between	1066(7)
Budget stabilization reserve	1066(10)
Contingency and emergency	1066(3), (25)
Debt service	1066(3)
General budgetary provisions	1066(IV)
General Fund	1066(3)
Highway Fund	1066(4)
Negative budget reserve management flexibility	1066(7)
Reversion of unencumbered balances	1066(26)
Salary adjustment reserve	1066(3)
Salary increase reserve	1066(3)
State aid	1066(5)
Transfers of appropriations for salaries and wages	1066(7)
Use of appropriations to institutions	
that are in addition to receipts by them	1066(7)
Vacant positions	1066(7)
Investments authorized for special funds	813
Local government tax distributions	813; 814; 945;
	1066(11), (27), (29)
State agency overdraft fees	1074(17)
Studies:	
Budget restructuring	1078(2.6)
Economic Future Study Commission:	
Budget stabilization reserve	1066(10)
Creation	1066(22)

Appropriations:—continued**Studies:—continued**

- Future Strategies for North Carolina,
Joint Legislative Commission on 1066(23)
- Infrastructure bonds 1078(2.1)(5)

Aquaculture—see Fish and Fishing**Armed Forces:**

- Civil Air Patrol Death Benefits Act—
technical amendment 1024(32)
- Military education program transferred from
community colleges to UNC Board of Governors 997
- National Guard tax deduction repealed 1002
- Veterans—see that heading

Arrests—see Criminal Procedure**Arts:**

- Art in State Buildings Committee membership 1024(23)(b)
- Grassroots arts program funds 1074(6)
- Isothermal Community College fine arts center funds 1074(2)
- Museum of Art landscaping funds 1074(2)
- N.C. Performing Arts Center funds 1074(6), (19)
- N.C. School of the Arts funds 1066(3)
- Pack Place education/arts/service center funds 1074(6)

Asbestos—asbestos removal reserve funds 1074(2)**Ashe County—register of deeds vacancies 1056****Asheboro, City of:**

- Airport property lease without competitive bid 867
- Charter amendments 921
- City manager's authority to settle claims 921

Asheville, City of—Pack Place funds 1074(6)**Athletics—see Sports****Attorney General, Office of the—see Justice, State Department of****Attorneys:**

- Certain powers of attorney made durable 992
- Indigent Persons' Attorney
 - Fee Fund disbursements 946; 1066(125), (127)(e)
- Public defender nomination procedure changed 1074(16)
- Raleigh employee appeals—civil service commission
 - award of attorney fees and costs unauthorized 817
- Study—public attorney education assistance 1078(2.1)(4)

Autism:

- Autism Society funds 1066(146)
- Autistic Foundation camp/conference center
 - grant funds 1074(6)
- UNC-Chapel Hill Center for Autistic Adults funds 1074(3)

Aviation:

Asheboro airport property lease procedures	867
Civil Air Patrol Death Benefits Act—	
technical amendment	1024(32)
Craven County airport authority terms; name changed	1046
Macon County airport authority established	955
Pasquotank County airport authority membership	860
Rutherford County airport authority lease of property	955
State aid—aeronautics	1066(3)
Study—infrastructure bonds	1078(2.1)(5)

B

Badin, Town of—incorporation	894
Bailey, Town of—zoning notice requirements	904
Bakersville, City of—corporate limits confirmed	927
Bald Head Island, Village of—fire protection	925

Banking:

Bad check penalties—property tax payments	1005
Bank/savings institution conversions	845
Joint, trust, and personal agency account technical changes .	866
Savings institution law technical and conforming changes ...	806
Tax refund anticipation loan regulations	881
Tax withholding collection contracts	945
Technical amendment	1024(44)
Unlawful use of banking terms by businesses	805

Barbers:

Barber school bond requirements	824
License fees increased	1029

Basic Education Program,

Legislative Study Commission on the—creation	1066(99)
---	----------

Beaufort, Town of—harbor dredging funds	1074(34)
---	----------

Beaufort County—forestry county headquarters funds	1074(2)
---	---------

Bertie County:

Deer hunting regulations—technical correction	809
Elementary school design—build contract system	876
Land condemnation/acquisition by local governments	
outside county requires consent of commissioners	1061
Windsor, Town of—see that heading	

Bessemer City, City of—charter revised and consolidated ...	1018
---	------

Bingo:

Beach bingo prize limits	826
Proceeds for charitable purposes	826

Biotechnology—Biotechnology Center funds	1066(3); 1074(2)
---	------------------

Birth—see Pregnancy	
---------------------	--

Birth Certificates:

Social security numbers of parents	1004(6)
Vital record funds	1066(9)

Birth-Related Neurological

Impairment Study Commission—continuation	1078(V)
--	---------

Black Mountain, Town of—corporate limits

reduced to correct annexation ordinance	838
---	-----

Bladen County:

Gas line construction authorized	839
School property acquisition	885

Boating:

Carteret County boating access area funds	1066(47)
Edgecombe County—transporting deer prohibited	972
Hyde County boating access area funds	1066(47)
Lake Adger “slow-no-wake” area technical correction	818
Watercraft museum funds	1074(2)

Bonds:

Barber school bond requirements	824
Cosmetic art school bond requirements	824
Drainage district actions validated	959
Fuel distributor and supplier bond requirements	908
Nurses aide training program bond requirements	824
Prison and youth services facilities bond referendum	935
Prison construction bond issuance authorized	933
Proprietary school bond requirements	824
Public transportation authority bonds	1024(41)
Securities—see that heading	
Study—infrastructure bonds	1078(2.1)(5)

Bridges—debris removal 1066(139)**Brunswick County:**

Bald Head Island, Village of—see that heading	
Caswell Beach, Town of—see that heading	
Leland, Town of—see that heading	
Long Beach, Town of—see that heading	
Sunset Beach, Town of—see that heading	

Budget and Management, Office of State:**Appropriations:****Capital improvements:**

Clean water and sewer programs 1074(2)–(3), (14)–(15)	
General Fund	1074(2), (3)
Jail/work release units	1074(2)
Low-level radioactive waste site selection	1074(2)
Nonrecurring State aid:	
Autistic Foundation grant	1074(6)
Pack Place grant	1074(6)
Performing arts center	1074(6), (19)
Poverty project grant	1074(6)

Budget and Management, Office of State:—continued**Appropriations:—continued****Capital improvements:—continued**

Prison construction	933; 935; 1074(2)
Repairs and renovations	1074(3), (11)
School construction	1066(28); 1074(3)
Water resources development projects	1074(34)

Current operations:

General Fund	1066(3)
Lapsed salaries	1066(38)
Negative reserve management flexibility	1066(7)–(9)
Rural Economic Development Center budget requests	1066(59)

Reports:

Budget reduction continuations	1066(7)(e)
Federal block grant budgeted increases	1066(6)(c)
Negative budget reserve flexibility	1066(7)(c)
Prison and youth services facilities projects	935
Prison construction projects	933
State building local fire protection funds	1060(26)–(28)

Studies:

Budget restructuring	1078(2.6)
Economic Future Study Commission:	
Budget stabilization reserve	1066(10)
Creation	1066(22)
Future Strategies for North Carolina, Joint Legislative Commission on	1066(23)
Infrastructure bonds	1078(2.1)(5)

Building Codes:

Charlotte housing code appeals board voting requirements ..	859
Durham County rezoning and site development plans	950
Edenton smoke detectors in residential dwelling units	829
Fire prevention inspector standards and certificates	1021
Fire sprinkler contractor licensure requirements	842, 978
Raleigh stormwater regulation ordinances	1043

Buncombe County:

Asheville, City of—see that heading	
Black Mountain, Town of—see that heading	
Custody mediation program funds	1066(128)
Land condemnation/acquisition by local governments outside county requires consent of commissioners	1061

Burial:

Cemeteries—see that heading	
Cremation—see that heading	
Funerals—see that heading	

Burke County:

- Land condemnation/acquisition by local governments
outside county requires consent of commissioners 1061
- Solid waste fee collection 974

Burlington, City of:

- Corporate limits land transfer to Town of Elon College 840
- Habitat for Humanity land conveyance 831
- Ralph Scott Group Homes land conveyance 832

Buses:

- School bus funds 1074(7)
- School transportation budget reduction 1066(96)
- Study—public transportation financing 1078(2.4)

Business Corporation Act:

- Annual reporting requirement delayed 1066(32)
- Implementation reserve funds 1074(7)
- Technical amendments 1024(3), (12.1)–(12.26)

C

Cabarrus County—hospital private nonprofit status 982

Caldwell County:

- Land condemnation/acquisition by local governments
outside county requires consent of commissioners 1061
- Lenoir, City of—see that heading

Carolina Beach, Town of—beach renourishment 1074(34)

Carteret County:

- Beaufort, Town of—see that heading
- Cedar Island boating access area funds 1066(47)
- Morehead City, Town of—see that heading

Cary, Town of:

- Local Firemen's Supplemental Retirement Benefit Fund—
receipts, eligibility, increased maximum benefits 924
- Occupancy tax levy authorized 874

Caswell Beach, Town of—sea turtle sanctuary 858

Caswell County—solid waste fee collection 905

Catawba County:

- Long View, Town of—see that heading
- Newton, City of—see that heading

Cemeteries:

- Burial—see that heading
- Cremation—see that heading
- Funerals—see that heading
- Veterans cemetery funds 1074(2)

Census —municipal redistricting rules and procedures	1012
Cerebral Palsy —group home/developmental center funds	1074(6)
Chadbourn, Town of —charter revised and consolidated	895
Chapel Hill, Town of —special projects district for taxpayer participation with City/County of Durham	999
Charities —see Corporations, Non-Profit	
Charlotte, City of:	
Charlotte/Mecklenburg food/beverage sales tax refunds to certain nonprofit and governmental entities	922
City manager's authority to settle claims	862
Convention center room occupancy tax proceeds	821
Corporate limits modified	939
Housing authority terms	835
Housing code appeals board voting requirements	859
Performing arts center funds	1074(6), (19)
Charters:	
Asheboro charter amendments	921
Badin incorporation	894
Bessemer City charter revised and consolidated	1018
Chadbourn charter revised and consolidated	895
Clinton city council election procedures revised	887
Greenlevel incorporation	942
Greensboro general fund appropriations	896
Greensboro recall petition procedures	896
Lexington firemen's retirement benefits increased	931
Municipal Incorporations—see that heading	
Newton charter revised and consolidated	1042
Raleigh fair housing provisions	816
Reidsville charter revised and consolidated	957
St. Pauls town administrator powers and duties	902
Statesville city clerk and city treasurer appointments	855
Stokesdale corporate boundaries redefined	956
Topsail Beach contract and purchasing procedures	846
Trent Woods annexation of certain described territory	947
Trent Woods compensation of municipal officers	947
Whiteville mayor's right to vote in council proceedings	828
Winston-Salem fair housing ordinance amendments	864
Checks —see Banking	
Cherokee County:	
Andrews, Town of—see that heading	
Recreation and security service district referendum	1049
Child Abuse:	
Day care abuse/neglect investigator funds	1066(69)
Domestic violence program funds	1066(13), (16)
Neglected child definition clarified	815
Sexual exploitation of a minor	1022
Social Services Block Grant funds	1066(6)

Child Custody—

Buncombe County mediation program funds 1066(128)

Child Support:

Child support guidelines 1066(126); 1067

Medical support for minor children 1067

Studies:

Comprehensive child support enforcement 1066(126)

Presumptive child support guidelines 1067

Children—see Minors**Children With Special Needs:**

Exceptional children program support funds 1074(7)

Exceptional children's appeals process amendments 1058

Handicapped child early intervention,
developmental services, and education 1003

Handicapped Children from Birth to Five Years of Age,
Interagency Coordinating Council for—creation 1003

Handicapped education safeguard activities by Department
of Environment, Health, and Natural Resources exempt
from administrative hearings 1004(36); 1075(4)

Willie M. reporting date changed 1066(64)

Chowan County—Edenton

smoke detectors in residential dwelling units 829

Churches and Religious Institutions:

Employer tax withholding requirements 945

Food sales and use tax exemption 1060

Cities and Towns:

Annexation—see that heading

Beer and wine tax distributions 813; 1066(11)

Intangibles tax distributions 813; 1066(11)

Inventory tax reimbursements 1066(29)

Mail order sales tax distributions 1066(27)

Municipal redistricting rules and procedures 1012

Retirement—see that heading

State aid to municipalities 1066(5)

Study—infrastructure bonds 1078(2.1)(5)

Utility tax distributions 813; 814; 945; 1066(11)

Waste Management—see that heading

Zoning—see that heading

Civil Procedure:

Mental health facility

quality assurance committee confidentiality; liability 1053

Navigable water land claim resolution period extended 869

Service of process fees increased 1044

Statements of monetary relief sought—filing deadline 995

Technical correction 1024

Cleveland County:

- Land condemnation/acquisition by local governments
 - outside county requires consent of commissioners 1061
- Solid waste fee collection 938
- Unlawful ambulance requests 834

Clinton, City of:

- Board of education election procedures revised 886
- City council election procedures revised 887

Coastal Resources:

- Buxton Woods funds 1066(39); 1074(3)
- Carolina Beach renourishment funds 1074(34)
- Caswell Beach sea turtle sanctuary 858
- CAMA permit application fees established . . . 987; 1066(53)(a)
- CAMA permit/compliance activities 987; 1066(53)(a)
- Fish and Fishing—see that heading
- Pollution—see that heading
- Report—CAMA permit program annual report 987; 1066(53)(a)
- Water and Sewer Systems—see that heading

Colleges and Universities:

- Aid to private colleges clarified 1066(80)
- Community Colleges—see that heading
- Proprietary Schools—see that heading
- Study—higher education opportunity 1066(85)
- Tuition—see that heading
- University of North Carolina—see that heading

Columbus County:

- Chadbourn, Town of—see that heading
- School property acquisition 885
- Whiteville, City of—see that heading

Commerce:

- Business Corporation Act—see that heading
- Corporations, For-Profit—see that heading
- Debtor and Creditor—see that heading
- Department name change—conforming amendment . . . 1024(47)
- Economic and Community Development—see that heading
- Insurance Consumer Protection Fund created 1069
- Ports—see that heading
- Securities—see that heading
- Small Businesses—see that heading
- Travel and Tourism—see that heading
- Uniform Commercial Code technical amendments 1024(8)

Communications:

- Advertising—see that heading
- Computers—see that heading
- Confidentiality—see that heading
- Newspapers and Magazines—see that heading
- Radio—see that heading

Communications:—continued

Signs—see that heading

Study—Open Government Through Public

Telecommunications Study Commission created . . . 1078(VI)

Telephone—see that heading

Television—see that heading

Community Colleges:

Anson Community College satellite funds 1074(2)

Appropriations:

Budget guidelines 1066(90)

Capital improvements 1074(2)

Current operations 1066(3); 1074(5)

Bookstore sales; book purchases 1066(91); 1074(5)

Cape Fear Community College classroom funds 1074(2)

Craven Community College

student activity center funds 1074(2)

Equipment purchases 1074(5)

Fayetteville Community College

Technology Center funds 1074(2)

Franklin County satellite funds 1074(3)

Internship Council allocation of summer interns 900

Isothermal Community College arts center funds 1074(2)

Johnston Community College library renovation 1074(2)

Literacy education budget guidelines 1066(90)

Pitt Community College vocational building funds 1074(2)

Proprietary school licensure/regulation . . . 824, 877, 1030, 1033

Report—budget guidelines 1066(90)

Richmond Community College:

Childbirth classes 1066(87)

Tech Prep funds 1066(58)(c)–(d), (89)

Roanoke-Chowan Community College funds 1074(2)

Rockingham Community College funds 1074(2)

Salaries and Benefits—see that heading

Stanly Community College satellite funds 1074(2)

Studies:

Defensive Driving—Citation Dismissal Task Force 1065

Education Oversight Committee 1066(115)

Higher education opportunity 1066(85)

Infrastructure bonds 1078(2.1)(5)

Tuition:

Increase 1066(88)

Radio Emergency Association Citizens Team

(REACT) tuition waiver 915

Union County satellite funds 1074(2)

Vance-Granville Community College satellite funds . . . 1074(3)

Veterans and military education program transferred 997

Wake Technical Community College funds 1074(2)

Community Development—

see Economic and Community Development

Computers:

Food and lodging facility inventory	1064; 1066(53)
Revenue Department debt setoff expenses	946
School reporting system funds	1066(105)
State Auditor's powers and duties	1024(36)
State Treasurer data processing funds	1074(7)
Transportation computing center position funds	1066(138)

Condemnation—see Eminent Domain**Confidentiality:**

Absentee ballot law amendments	991
Insurance fraud reporting and investigation	1054
Judicial conduct investigations	995
Medical records	1021
Mental health facility quality assurance committees	1053
Wake County unmarked human service vehicles	856

Conflicts of Interest—see Ethics**Conservation:**

Coastal Resources—see that heading	
Fish and Fishing—see that heading	
Forestry—see that heading	
Hunting—see that heading	
Indian Cultural Center	
environmental impact assessment	1074(2), (18)
Pollution—see that heading	
Solid Waste—see that heading	
Water and Sewer Systems—see that heading	
Wildlife—see that heading	

Continuing Care Facilities—technical amendment 1024(45)**Contractors—fire sprinkler licensure requirements** 842, 978**Contracts and Purchases:**

Athlete agent regulation	865
Bald Head Island fire protection	925
Bertie County elementary school design—build contracts	876
Bladen County school property acquisition	885
Columbus County school property acquisition	885
Disadvantaged business participation	1051; 1066(143)
Duplin County property conveyance	1006
Oxford property conveyance	
for city hall and fire department	833
Pitt County economic development property conveyances ...	847
Prison construction contracts	933
Private substance abuse detention center contract ...	1066(121)
Reversion of unencumbered balances—	
fund commitment limitations	1066(26)

Contracts and Purchases:—continued

Single-prime and separate-prime contracts— public bidding law clarified	1051
State Building Commission evaluation of prior State work	889
State property real estate appraisals	827(4), (12)
Tax withholding collection contracts with banks	945
Topsail Beach contract and purchasing procedures	846
UNC purchasing procedures	936
UNC sales and use tax refunds for contract expenditures ...	936

Corporations, For-Profit:

Annual report filing fee increased	1057
Business Corporation Act: Annual reporting requirement delayed	1066(32)
Implementation funds	1074(7)
Technical amendments	1024(3), (12.1)–(12.26)
Charter suspension notification requirements	1024(19)
Income tax estimated tax payment threshold reduced	984
Intangibles tax dividend deductions	814
IRC taxable income/tax exemption reference updates	981
N.C. Enterprise Corporation investment tax credits	848
Security registration and filing exemptions	803
Subchapter S Corporation shareholder loss carryforward tax deductions	984
Uniform Commercial Code technical amendments	1024(8)
Unlawful use of banking terms by businesses	805

Corporations, Non-Profit:

Bingo proceeds for charitable purposes	826
Burlington Habitat for Humanity land conveyance	831
Cabarrus Memorial Hospital private nonprofit status	982
Charlotte/Mecklenburg food and beverage sales tax refunds to certain entities	922
Churches and Religious Institutions—see that heading	
Medical services corporation directors, officers, and employees—limited liability	1071
Negative budget reserve management flexibility	1066(7)
Ralph Scott Group Homes land conveyance	832
UNC payroll deductions for UNC charities and athletics	1066(82)

Correctional Institutions:**Appropriations:****Capital improvements:**

General Fund	1074(2)
Goldsboro DWI treatment facility	1074(2)
Jail/work release units	1074(2)
Prison construction	933; 935; 1074(2)
Women's Correctional Center substance abuse facility	1074(2)

Correctional Institutions:—continued**Appropriations:—continued****Current operations:**

County per diem reimbursements increased . . .	1066(118)
Gates County correctional center	
shared wastewater treatment system	1066(120)
General Fund	1066(3)
Highway Fund	1066(4)
Operational fund limitations	1066(117)
Southern Appalachia Mainstream grant	1066(119)
Substance abuse detention	
center private-sector contract	1066(121)
Summit House continued funding	1066(129)
Treatment Alternatives to Street Crimes	1066(6)
Negative budget reserve management flexibility	1066(7)

Community penalties programs:

Allocation of funds	1066(132)
Audit	1066(132)
Reorganization prohibited	1066(130)
Inmate road crew performance audit	1066(122)
IMPACT program for youthful offenders	1010
Prison and youth services facilities bond referendum	935
Prison construction bond issuance authorized	933
Prison population limits increased	933

Reports:

Community penalties program audit	1066(132)
Inmate road crew performance audit	1066(122)
Prison and youth services facilities projects	935
Prison construction projects	933
Southern Appalachia Mainstream grant funds . . .	1066(119)
Substance abuse detention center	
private-sector contract	1066(121)
Summit House	1066(129)

Studies:

Infrastructure bonds	1078(2.1)(5)
Prisons, Special Committee on:	
Termination	1076(5)
Transfer of duties to Sentencing	
and Policy Advisory Commission	1076(5)
Transfer of substance abuse treatment in	
prisons study to Mental Health	
Study Commission	1076(5)
Sentencing and Policy Advisory Commission created . . .	1076
Substance abuse treatment in prisons	1076(5)

Cosmetics:

Barber license fees increased	1029
Barber school bond requirements	824
Cosmetic art school bond requirements	824

Cosmetics:—continued

Cosmetologist temporary employment permits	1013
Electrology licensure	1033
Study—cosmetic arts regulation	1078(IV)

Councils of Government—reduction of funds 1066(14)**Counties:**

Beer and wine tax distributions	813; 1066(11)
Council of Government funds reduced	1066(14)
Drainage commissioner selection procedures modified	959
Drainage district actions validated	959
Health aid funds	1064; 1066(9), (53)(f)
Historic districts/landmarks—technical amendment ...	1024(40)
Intangibles tax distributions	813; 1066(11)
Inventory tax reimbursements	1066(29)
Mail order sales tax distributions	1066(27)
Residential street light special assessments	923
Retirement—see that heading	
Study—infrastructure bonds	1078(2.1)(5)
Utility tax distributions	813; 814; 945; 1066(11)
Waste Management—see that heading	
Zoning—see that heading	

County Commissioners—

Sampson County election procedures	969
--	-----

Courts:**Appropriations:**

Buncombe County custody mediation program ...	1066(128)
Capital case resentencing funds	1066(123)
Durham County defender district	1066(127); 1074(16)
General Fund	1066(3)
Indigent Persons' Attorney Fee Fund disbursements	946; 1066(125), (127)(e)
Operating expenses	1066(125)
Rape victim witness counselor program	1066(128)

Civil Procedure—see that heading**Clerks of Court:**

Drainage commissioner selection procedures modified ...	959
Federal lien registration	1047
Guilty plea jurisdiction in littering cases limited	1041
Small estate settlements by clerks of superior court	1015
Superfund lien filing notices	1047

Crimes—see that heading**Criminal Procedure—see that heading****Durham County**

defender district created	1066(127); 1074(16)
---------------------------------	---------------------

Indigent Persons' Attorney Fee Fund

disbursements	946; 1066(125), (127)(e)
---------------------	--------------------------

Insurance Department exemption from filing fees 1069**Judgment debtor debt setoff procedures** 946

Courts:—continued

Judicial conduct investigations	995
Juries—grand jury drug trafficking investigations extended	1039
Juvenile Code:	
Guardian ad litem appointment provisions clarified	851
IMPACT program for youthful offenders	1010
Judgment debtor debt setoff procedures	946
Neglected child definition clarified	815
Victims compensation extended for certain minors	898
Magistrate guilty plea jurisdiction in littering cases limited	1041
Public defender appointment procedure changed	1074(16)
Registers of Deeds—see that heading	
Report—judgment debtor debt setoff procedures	946
Retirement—see that heading	
Salaries and Benefits—see that heading	
Special superior court judge terms extended	1066(124)
Studies:	
Child support enforcement	1066(126)
Child support guidelines	1067
Defensive Driving—Citation Dismissal Task Force	1065
Sentencing and Policy Advisory Commission	1076
Will caveat proceeding settlement agreement judgments	949

Craven County:

Airport authority staggered terms; name changed	1046
Trent Woods, Town of—see that heading	

Credit Unions—see Banking**Cremation:**

Burial—see that heading	
Cemeteries—see that heading	
Crematory operator licensure	988
Funerals—see that heading	

Crime Control and Public Safety, State Department of:**Appropriations:****Capital improvements:**

Armory construction	1074(3)
General Fund	1074(3)
Law enforcement driving track	1066(134)

Current operations:

Community penalties programs	1066(132)
General Fund	1066(3)
Highway Fund	1066(4)
Highway Patrol positions	1066(133)
State aid	1066(3)
Summit House	1066(129)

Civil Air Patrol Death Benefits Act

technical amendment	1024(32)
---------------------------	----------

Crime Control and Public Safety,**State Department of:—continued**

Community penalties programs:

Allocation of funds 1066(132)

Audit 1066(132)

Reorganization prohibited 1066(130)

Highway Patrol—see Law Enforcement/Officers

Reports:

Community penalties program audit 1066(132)

Summit House 1066(129)

Studies:

Defensive Driving—Citation Dismissal Task Force 1065

Sentencing and Policy Advisory Commission 1076

Victims Compensation eligibility 1066(131)

Crimes:

Banking—unlawful use of banking terms by businesses 805

Bingo regulations 826

Child Abuse—see that heading

Cleveland County unlawful ambulance requests 834

Dangerous dogs—precautions, penalties, liability 1023

Domestic Abuse—see that heading

Driving While Impaired (DWI)—see that heading

Drugs—see that heading

Environmental criminal penalties increased 1045; 1075(8)

Hunting—see that heading

Infractions—see that heading

Insurance fraud reporting and investigation 1054

Littering—magistrate and clerk of court

guilty plea jurisdiction limited 1041

Motor Vehicles—see that heading

Rape victim program funds 1066(6), (16), (128)

Sentencing and Policy Advisory Commission created 1076

Sexual exploitation of a minor 1022

Tax refund anticipation loan regulations 881

Criminal Procedure:

Driving While Impaired (DWI)—see that heading

Drugs—see that heading

Intensive probation and parole for

felons and misdemeanants 994

IMPACT program for youthful offenders 1010

Littering—magistrate and clerk of court

guilty plea jurisdiction limited 1041

Parole with house arrest for certain misdemeanants 1031

Probation and parole supervision fees increased 1034

Restitution—see that heading

Sentencing and Policy Advisory Commission created 1076

Service of process fees increased 1044

Victims Compensation—see that heading

Cultural Resources:**Appropriations:****Capital improvements:**

C.H. Brown historic site improvements . . .	1074(2), (11)
General Fund	1074(2), (3)
Indian Cultural Center	1074(2), (18)
Museum of the Albemarle planning	1074(3)
Old Fort Branch Museum	1066(19)
Spencer Shops-Round House renovations	1074(2), (11)
Ziegler House renovation	1074(2), (11)

Current operations:

General Fund	1066(3)
Grassroots arts program	1074(6)
Latham House matching eliminated	1066(20)
Washington County museum curator	1066(18)
Nonrecurring State aid	1074(6)
State aid	1066(3)

Arts—see that heading

Historic Preservation—see that heading

Libraries—see that heading

Museums—see that heading

Cumberland County:

Forestry county headquarters funds	1074(2)
Lake Rim Fish Hatchery dam repair funds	1066(47)

Currituck County—migratory wildfowl protections 808**D****Dams:**

Dam construction/removal application fees . . .	976; 1066(53)(c)
Dam safety civil penalty assessments	1036
Dam safety program biennial report	976; 1066(53)(c)
Lake Rim Fish Hatchery dam repair funds	1066(47)

Dare County:

Bear hunting seasons	837
Board of education membership and election	819
Colington Bay navigation funds	1074(34)
Leash law district ordinances	963
Nags Head, Town of—see that heading	

Davidson County:

Firearm and pellet gun ordinances	852
Land condemnation/acquisition by local governments	
outside county requires consent of commissioners	1061
Lexington, City of—see that heading	

Davie County:

Board of education property conveyance	929
Firearm and pellet gun ordinance	929
Land condemnation/acquisition by local governments outside county requires consent of commissioners	1061
Mocksville, Town of—see that heading	
Room occupancy and tourism development tax	928

Day Care:

Block grant funds	1066(6)
Day care abuse/neglect investigator funds	1066(69)
Day care rates	1066(68)
Head Start funds	1074(30)
Technical amendments	1024(21), (23)(c)

Death:

Anatomy Commission technical amendments	1024(29)
Burial—see that heading	
Cemeteries—see that heading	
Cremation—see that heading	
Death Benefits Act technical amendment	1024(32)
Funerals—see that heading	
Infant Mortality—see that heading	
Vital record funds	1066(9)
Wills and Estates—see that heading	

Debtor and Creditor:

Banking—see that heading	
Bonds—see that heading	
Charter suspension notification requirements	1024(19)
Debt setoff procedures	946
Foreclosure sale technical amendment	1024(11.1)
Insurance financial solvency	1054; 1055
Interest—see that heading	
Liens—see that heading	
Loans—see that heading	
Securities—see that heading	

Defensive Driving—(Citation Dismissal Task Force,

Interagency—)creation	1065
-----------------------------	------

Dentistry:

Dental anesthesia regulation sunset removed	1066(12)
Dental Examiners Board compensation modified	892
Medical services corporation directors, officers, and employees—limited liability	1071

Disabled Persons:

ADAP transportation reimbursements	1066(66)
Blind services funds	1066(3), (6)
Block grant funds	1066(6)
Cerebral Palsy group home/development center funds	1074(6)
Children With Special Needs—see that heading	

Disabled Persons:—continued

Deaf and blind school funds	1066(3)
Developmental disability funds	1066(3), (6)
Disability Income Plan coverage to employees on leaves of absence receiving workers compensation benefits ...	1032
Disabled children block grant funds	1066(6)
Disabled dependent tax credit	984
Discrimination—see that heading	
Handicapped child early intervention, developmental services, and education	1003
Handicapped Children from Birth to Five Years of Age, Interagency Coordinating Council for—creation	1003
Handicapped education safeguard activities by Department of Environment, Health, and Natural Resources exempt from administrative hearings	1004(36); 1075(4)
Handicapped parking maximum fine increased	1052
Handicapped parking sign penalty designations	1052
Handicapped services funds	1074(30)
High Point firemen's disability benefits increased	920
HUD group home funds	1074(6)
Local Governmental Employees' Retirement System disability benefits—certain conversions allowed	1080
Rescue Squad Workers' Relief Fund:	
Administrative costs	1066(33)
Board of Trustee appointments	1066(33)
Motor vehicle inspection fee receipts	1066(33)
Study—Birth-Related Neurological Impairment Study Commission continued	1078(V)
Technical amendment	1024(35)
Vocational rehabilitation funds	1066(3)

Discrimination:

Charlotte housing authority terms	835
Community development corporation grants	1074(6), (33)
Disadvantaged business participation in public contracts	933; 935; 1051; 1066(143)
Fair housing law conforming amendments	979
Human Relations Council changed to Human Relations Commission	979
Human relations program dispute resolutions	1062
Raleigh fair housing provisions	816
State employee appeals	1025
Williamston board of commissioners election procedures ...	883
Winston-Salem fair housing ordinance amendments	864

Diseases:

AIDS drug reimbursement eligibility standards	1066(44)
AIDS/HIV block grant funds	1066(6)
Adult health care funds	1066(9)
Arthritis program funds	1066(9)

Diseases:—continued

Asbestos—see that heading

Autism—see that heading

Cerebral Palsy group home/developmental center funds 1074(6)

Children's special health services funds 1074(7)

Communicable disease vaccine funds 1066(9)

Epidemiology funds 1066(9), (42)

Epilepsy contract funds 1066(9)

Genetic screening contract funds 1066(9)

Health aid to counties 1064; 1066(9), (53)(f)

Hypertension program funds 1066(6), (9)

Immunization Branch line-item transfers 1066(42)

Infant Mortality—see that heading

Lead-based paint poisoning block grant funds 1066(6)

Maternal and child health services funds 1066(6)

Preventive health block grant funds 1066(6)

Sickle cell funds not subject to budget flexibility 1066(54)

Sudden Infant Death Syndrome block grant funds 1066(6)

Tuberculosis control funds 1066(6), (9)

Dispute Settlement Centers:

Buncombe County custody mediation program funds 1066(128)

Community penalties program funds 1066(132)

Human relations program dispute resolutions 1062

Dogs—see Animals**Domestic Abuse:**

Child Abuse—see that heading

Domestic violence program reductions prohibited 1066(16)

N.C. Coalition Against Domestic Violence grant 1066(13)

Rape—see Crimes

Drivers Licenses—see Motor Vehicles**Driving While Impaired (DWI):**

Goldsboro treatment facility funds 1074(2)

Habitual offender minimum sentences 1039

House arrest as a condition of special probation 1031

Drugs:

AIDS drug reimbursement eligibility standards 1066(44)

Arrest reports by law enforcement agencies 814

Communicable disease vaccine funds 1066(9)

Controlled substance schedule additions 1040

Dental anesthesia regulation sunset removed 1066(12)

Driving While Impaired (DWI)—see that heading

Employing minor to commit drug law violation 1081

Grand jury drug trafficking investigations extended 1039

Immunization Branch line-item transfers 1066(42)

Nurses authorized to dispense drugs recommended by

Department of Environment, Health, and Natural

Resources at local health departments 1004(2); 1075(4)

Drugs:—continued

Omnibus Drug Act	1039
Pharmacy Board per diem allowance increased	825
Precursor chemical possession and distribution	
with intent to manufacture illegal drugs prohibited	1039
Prescription drug reimbursement change	1074(29)
Register of deeds distribution of pamphlet on	
substance abuse during pregnancy with marriage license	1039
Restitution for SBI lab facilities	1039
Sale of serums, vaccines, etc.,	
by Department of Environment,	
Health, and Natural Resources	1004(1); 1075(4)
Sale or delivery to pregnant females;	
on school property	1081
Study—prescription drug assistance	1078(2.3)
Substance Abuse—see that heading	
Taxes:	
Interest and penalty payments	814
Law enforcement agency receipts	1039
Technical amendment	1024(17)

Duplin County:

Property conveyance	1006
Solid waste fee collection	940
Warsaw, Town of—see that heading	

Durham, City of:

Municipal boundary legal description amended	841
Special projects district for taxpayer participation	
with Durham County and Town of Chapel Hill	999

Durham County:

Defender district created	1066(127); 1074(16)
Durham, City of—see that heading	
Hospital extension of time to	
file application for sales and use tax refund	999
Metes and bounds property description amended	841
Rezoning and site development plans	950
Special projects district for taxpayer participation with	
City of Durham and Town of Chapel Hill	999

E**Economic and Community Development:****Appropriations:**

Block grant funds	1066(6)
Capital improvements:	
Biotechnology Center construction grant	1074(2)
General Fund	1074(2), (3)
State Ports Authority	1074(2), (3)
Statistical Sciences National Institute	1074(3), (35)

Economic and Community Development:—continued**Appropriations:—continued****Current operations:**

Biotechnology Center	1066(3)
Celebration 1991 activities	1066(56)
Employment Security Commission	
local office operation funds	1066(58)(b), (e), (f)
General Fund	1066(3)
Microelectronics Center	1066(3)
Rural Economic Development Center	1066(59), (60)
Travel and Tourism transfer of funds	1074(36)
Worker Training Trust Fund	1066(58)

Nonrecurring State aid:

Housing Trust Fund	1074(6)
Industrial Economic Development Fund	1074(6)
Rural Economic Development Center	1074(6), (33)

State aid 1066(3)**Community action program funds** 1066(6), (71)**Community action programs transferred****to Department of Human Resources** 1004(35); 1075(4)**Community college budget guidelines** 1066(90)**Community development corporation grants** 1074(6), (33)**Community services block grant funds** 1066(6)**Department name change—conforming amendment ...** 1024(47)**Department powers and duties—Type II transfers** 1004**Employment—see that heading****Henderson County land subdivision authority** 863**Incubator facility grants** 952**Lumberton economic development conveyances—****prospective revenue considerations** 913**Macon County:****Industrial park land conveyance exemptions** 998**Prospective revenue considerations** 913**Nash County industrial development funds** 1063**N.C. Enterprise Corporation investment tax credits** 848**Pitt County economic development property conveyances ...** 847**Publications:****Economic development publication costs** 1066(55)**Manufacturing directory proceeds****for industrial promotional advertising** 1066(57)**Travel and tourism promotional advertising funds****transferred for marketing/media positions** 1074(36)**Reports:****Employment Security Commission****local office operating funds** 1066(58)(b), (e), (f)**Employment services program** 1066(58)(b)**Job Training Partnership Act funds** 1066(6)(d)**Job training program for****unemployed and working poor** 1066(58)(a), (c), (d)

Economic and Community Development:—continued**Reports:—continued**

Manufacturing directory proceeds 1066(57)(b)

Rural Economic Development

Center activities 1066(59)–(60); 1074(6), (33)

Unemployment insurance program 1066(58)(b)

Veterans employment program funds 1066(58)(b)

Rural Economic Development

Center funds 1066(59)–(60); 1074(6), (33)

State Ports Authority:

Funds 1074(2)

Long-range planning funds 1074(3)

Membership and terms 1072

Studies:**Economic Future Study Commission:**

Budget stabilization reserve 1066(10)

Creation 1066(22)

Future Strategies for North Carolina,

Joint Legislative Commission on 1066(23)

Rural economic development grant program 1066(84)

Rural economic development internships 1066(84)

Rural economic development scholarships 1066(84)

Rural planning/development degree programs 1066(84)

State and local government

recycling and waste management plan 1066(40)

Waste stream analysis 1066(40)

Economic Future Study Commission:

Budget stabilization reserve 1066(10)

Creation 1066(22)

Eden, City of—Leaksville board of education filing period 975**Edenton, Town of—smoke detectors in residential units 829****Edgecombe County—**

deer hunting and transportation prohibitions 972

Education (see also Higher Education):**Appropriations:****Capital improvements:**

Education Building furnishings 1074(2)

School construction 1074(3)

School funding from nonrecurring funds 1066(28)

Current operations:

Basic Education Program 1066(98)

Career development program transition 1066(97)

Class size waivers/teacher positions 1066(113)

Driver training program 1066(144)

Exceptional children program support 1074(7)

Food service personnel staff development 1066(104)

General Fund 1066(3); 1074(7)

Geographic Alliance Network 1066(112)

Education (see also Higher Education):—continued

Appropriations:—continued

Current operations:—continued

Governors' Schools National Conference	1066(111)
Head Start funds	1074(30)
Negative budget reserve flexibility	1066(7)
School bus purchases	1066(96); 1074(7)
Science and Math High School	1066(3)
Tech Prep program	1066(58)(c)–(d), (89)
Testing funds	1074(28)

Grants:

Federal block grants	1066(6)
Special fund for nongovernmental grants	1066(102)
Bertie County elementary school design–build contracts	876
Bladen County school property acquisition	885
Columbus County school property acquisition	885
Davie County board of education property conveyance	929
Dropout prevention contracts	1066(114)
Exceptional children's appeals process amendments	1058
Gates County school shared wastewater system	1066(120)
Handicapped child early education	1003
Handicapped education safeguards	1004(36); 1075(4)
Oxford school property conveyance	833

Reports:

Class size waivers/teacher positions	1066(113)
Education reports eliminated	1066(103)
Electronic data processing audits	1066(105)
School administrator salary schedule repealed	1074(25)
School transportation system savings	1066(96)(d)
Tech Prep program	1066(58)(c)–(d), (89)
Uniform education reporting system	1066(105), (106)
Willie M. reporting date changed	1066(64)
Robeson County school funding procedures modified	986
Salaries and Benefits—see that heading	
Sampson County school construction funds	1066(109)
School Facility Needs Commission—	
technical amendment	1024(23)(d)
School instructional material selection procedures	1074(23)

Studies:

Basic Education Program,

Legislative Study Commission on the	1066(99)
---	----------

Class size waivers/teacher positions	1066(113)
--	-----------

Drivers education	1066(145)
-----------------------------	-----------

Education governance structure	1074(26)
--	----------

Education Oversight Committee	1066(99)(d), (115)
---	--------------------

Education Study Commission:

Parental involvement in schools	1074(24)
---	----------

School Improvement Act	1078(VII)
----------------------------------	-----------

Higher education opportunity	1066(85)
--	----------

Education (see also Higher Education):—continued**Studies:**—continued

Infrastructure bonds	1078(2.1)(5)
Instructional materials containing advertising ...	1074(23)(d)
Noncertified employee salaries	1066(108)
Year-round education	1074(27)
Teacher liability protection	1066(116)
Teacher positions/class size waivers	1066(113)
Teacher scholarship loan program expanded	1066(95)
Teachers' and State Employees' Comprehensive Major Medical Plan—see that heading	
Teaching Fellows Commission:	
Appointments	1038(19)
Loans forgiven in cases of death/disability ...	1066(101)(a)
Revolving fund uses	1066(101)(b)
Teaching position allotments in hospitals and treatment facilities	1066(92)
UNC public school assistance program	936
Year-round education	1074(27)

Education, Boards of:

Clinton election procedures revised	886
Dare County membership and election procedures	819
Eden, City of—Leaksville Township filing period	975
High Point election procedures	804
Pender County oath of office	1008
Sampson County election procedures codified	971

Education Oversight Committee, Joint Legislative:

BEP Legislative Study Commission report	1066(99)(d)
Creation	1066(115)

Education Study Commission:

Parental involvement in schools	1074(24)
School Improvement Act	1078(VII)

Elections:

Absentee ballot law amendments	991
Badin incorporation	894
Cherokee County recreation/security district referendum	1049
Clinton city council election procedures revised	887
Dare County leash law district ordinances	963
Drainage commissioner selection procedures modified	959
Education, Boards of—see that heading	
Greensboro recall petition procedures	896
Legislative statements of economic interest— certification and availability	890
Prison and youth services facilities bond referendum	935
Red Oak board of commissioners staggered terms	1035
Redistricting rules and procedures	1012
Registers of Deeds—see that heading	
Richfield rural fire protection district election	943

Elections:—continued

Sampson County Commissioners election procedures	969
Statewide voter file repealed	1066(30)
Strawberry assessment referendums	1027
Technical amendments	1024(42)–(43)
Watha 1989 election validated	884
Williamston board of commissioners election procedures	883

Elections, State Board of—appropriations	1066(3)
---	---------

Electricity—see Utilities**Electrolysis:**

Electrolysis Examiners Board—creation	1033
Licensure	1033

Elizabeth City, City of—airport authority membership	860
---	-----

Elm City, Town of—corporate limits reduced	934
---	-----

Elon College, Town of—corporate limits

land transfer from City of Burlington	840
---------------------------------------	-----

Emergency Medical Services:**Ambulances—see that heading**

Block grant funds	1066(6)
-------------------	---------

Death Benefits Act technical amendment	1024(32)
--	----------

Radio Emergency Association Citizens Team

(REACT) community college tuition waiver	915
--	-----

Rescue Squad Workers' Pension Fund reduction	1074(7)
--	---------

Rescue Squad Workers' Relief Fund:

Administration costs	1066(33)
----------------------	----------

Board of Trustee appointments	1066(33)
-------------------------------	----------

Motor vehicle inspection fee receipts	1066(33)
---------------------------------------	----------

Support vehicles equipped with lights and sirens	1020
--	------

Volunteer Rescue/EMS Fund:

Fire and Rescue Commission funds	1066(33)
----------------------------------	----------

Grant eligibility	1066(33)
-------------------	----------

Motor vehicle inspection fee receipts	1066(33)
---------------------------------------	----------

Eminent Domain:**Forsyth County utility commission**

eminent domain procedures	849
---------------------------	-----

Land condemnation/acquisition by**local governments outside certain counties**

requires consent of county commissioners	973, 1061
--	-----------

State property real estate appraisals	827(4), (12)
---------------------------------------	--------------

Utility infrastructure right-of-way acquisition	962
---	-----

Water and sewer condemnor quick-take authority	871
--	-----

Employment:

Employer tax withholding accelerated payments	945
---	-----

Employing minor to commit drug law violation	1081
--	------

Employment Security Commission

local office operating funds	1066(58)(b), (e), (f)
------------------------------	-----------------------

Employment:—continued

- Employment services program funds 1066(58)(b)
- Job Opportunities and Basic Skills Training Program:
 - Social services statutes conforming amendments 966
 - Welfare recipient assistance 1066(58)(c), (d)
- Job Training Partnership Act funds 1066(6), (58)
- Job training program for
 - unemployed and working poor 1066(58)(a), (c), (d)
- Multiple employer welfare arrangement registration 1055
- OSHA civil penalties increased 844
- Retirement—see that heading
- Salaries and Benefits—see that heading
- Study—multiple employer welfare arrangements 1055(5)
- Tech Prep program grants 1066(58)(c), (d)
- Unemployment insurance program funds 1066(58)(b)
- Veterans employment program funds 1066(58)(b)
- Worker readjustment program funds reallocated ... 1066(58)(a)
- Worker Training Trust Fund distributions 1066(58)
- Workers Compensation:
 - Disability coverage to employees on leaves of
 - absence receiving workers compensation benefits ... 1032
 - Mutual Workers' Compensation
 - Security Fund assessment 985

Energy Assurance Study Commission—continuation ... 1078(III)**Engineering:**

- Corps of Engineers feasibility studies 1074(34)
- NCSU Engineering Graduate Center funds 1074(2)

Environment:

- Celebration 1991 environmental awareness 1066(56)
- Clarifying, conforming, technical amendments 1004, 1075
- Coastal Resources—see that heading
- Conservation—see that heading
- Dams—see that heading
- Environmental crimes—
 - criminal penalties increased 1045; 1075(8)
- Environmental epidemiology funds 1066(9)
- Environmental health aid to counties ... 1064; 1066(9), (53)(f)
- Fish and Fishing—see that heading
- Forestry—see that heading
- Hazardous Substances—see that heading
- Hazardous Waste—see that heading
- Hunting—see that heading
- Low-Level Radioactive Waste—see that heading
- Mining—see that heading
- Parks and Recreation—see that heading
- Pollution—see that heading
- Solid Waste—see that heading
- Trees—see that heading

Environment:—continued

Water and Sewer Systems—see that heading

Wildlife—see that heading

Zoos—see that heading

Environment, Health, and Natural Resources,**State Department of:****Appropriations:**

Block grant funds 1066(6)

Capital improvements:

Buxton Woods coastal reserves 1066(39); 1074(3)

Forest Resources county headquarters 1074(2)

General Fund 1074(2), (3), (4)

Shellfish sanitation lab facility 1074(3)

State Park System 1074(2)

Water resources projects 1074(3), (34)

Zoological Park North American Phase 1074(2), (4)

Current operations:

AIDS drug reimbursement eligibility 1066(44)

Adolescent pregnancy prevention 1066(9)

Adult health care 1066(9)

Arthritis program 1066(9)

Boating access areas 1066(47)

Children's special health services 1074(7)

Communicable disease vaccines 1066(9)

Environmental Management Division—

motor vehicle inspection fee receipts 1066(33)

Epidemiology 1066(9), (42)

Epilepsy contracts 1066(9)

General Fund 1066(3), (9); 1074(7)

Genetic screening contracts 1066(9)

Health aid to counties 1064; 1066(9), (53)(f)

Hypertension program 1066(6), (9)

Immunization Branch line-item transfers 1066(42)

Infant mortality reduction 1066(49)

Lake Rim Fish Hatchery dam repair 1066(47)

Lapsed salaries 1066(38), (52)

Lumber River park ranger funds 1066(45)

Mecklenburg County ranger funds 1066(46)

Medical examiner funds 1066(43)

Non-Medicaid reimbursement 1066(44)

Nuclear emergency planning and response ... 1066(53)(e)

Nurse midwives for underserved counties 1066(50)

Permitting, education, compliance 1066(52)–(53)

Pisgah Forest Fish Hatchery visitor center 1066(47)

Sickle cell funds—no budget flexibility 1066(54)

Tuberculosis control 1066(6), (9)

Union County fire plow operation 1066(46)

Union County ranger 1066(46)

Environment, Health, and Natural Resources,**State Department of:—continued****Appropriations:—continued****Current operations:—continued**

Vital records 1066(9)

Waste reduction technical assistance

to local governments and industries 1066(51)

Waste stream analysis 1066(40)

Water supply fluoridation 1066(6)

Wildlife Commission funds 1066(47)

Wildlife Committee expenses 1066(48)

Nonrecurring State aid:

Cerebral Palsy group homes/

developmental centers 1074(6)

Rural water association grant 1074(6)

Clarifying, conforming, technical amendments 1004, 1075

Environment:

Air emissions permit requirements 1037

Air pollution civil penalty assessments 1036

Air quality criminal penalties increased 1045

Civil penalty assessments 1036

CAMA activities; fees 987; 1066(53)(a)

Criminal penalties increased 1045; 1075(8)

Dam construction/removal application fees 976; 1066(53)(c)

Dam safety civil penalty assessments 1036

Erosion control plan approval fees 906; 1066(53)(b)

Hazardous substance criminal penalties 1045; 1075(8)

Hazardous waste criminal penalties 1045

Hazardous waste facility permitting funds 1066(52)

Hazardous waste management—

technical amendment 1024(31)

Inactive hazardous sites—

technical amendment 1024(30)(a), (b)

Low-level radioactive waste facility permits 1066(52)

Low-level radioactive waste site selection 1074(2)

Mining penalties—technical amendment 1024(16)

Mining permit application fees 944; 1066(53)(d)

Nuclear facility annual fee increased

for emergency response activities 964; 1066(53)(e)

Oil discharge civil penalty assessments 1036

Oil discharge criminal penalties 1045; 1075(8)

Radiation Protection Commission membership 1004(41)

Studies:

Air contaminant emission tax levy 850

Hazardous waste management 1078(2.7)

Superfund lien filing notices 1047

Superfund program technical amendment 1024(30)(c)

Functions, powers, duties—Type II transfers 1004

Environment, Health, and Natural Resources,**State Department of:—continued****Natural Resources:**

- Aquaculture water column leases 958; 1024(22)
- Hunting—fishing age seventy
sportsman combination license 909
- Jockey's Ridge State Park
property description clarified 1004
- Navigable water land claim resolution period extended 869
- Rest home resident complimentary fishing licenses 926
- Shellfish cultivation lease terminations delayed 958

Public Health:

- Anatomy Commission technical amendments 1024(29)
- Birth certificates—parent social security numbers . . . 1004(6)
- Food and lodging facility fees
for public health programs 1064; 1066(53)(f)
- Handicapped child early intervention,
developmental services, and education 1003
- Handicapped education safeguard activities
exempt from administrative hearings 1004(36); 1075(4)
- Health care employee liability insurance 1066(41)
- Home and Community Care
Advisory Committee appointments . . . 1004(57); 1075(7)
- Marriage licenses—register of deeds distribution of
pamphlet on substance abuse during pregnancy 1039
- Nurses authorized to dispense drugs
recommended by Department of
Environment, Health, and Natural
Resources at local health departments 1004(2); 1075(4)
- Sale of serums, vaccines, etc. 1004(1); 1075(4)
- Studies:
Nurse midwifery education program 1066(49)
- Prenatal care needs assessment 1066(49)

Reports:

- CAMA permit program annual report 987; 1066(53)(a)
- Dam safety program biennial report 976; 1066(53)(c)
- Erosion control plan approval program . . . 906; 1066(53)(b)
- Food and lodging facility fees 1064; 1066(53)(f)
- Hazardous waste facility resident inspectors 1082(2)
- Mining permit program annual report 944; 1066(53)(d)
- Water resources development projects 1074(3), (34)

Solid Waste Management:

- Capital Projects Financing Agency
Solid Waste Revolving Fund funds 1074(2)
- Food processing by-product designations 880
- Loan program—technical amendments 1024(38)
- Recycling programs 1009
- Regional authorities 888; 1004; 1075(5)
- Solid waste definition clarified 1009

Environment, Health, and Natural Resources,**State Department of:—continued****Solid Waste Management:—continued**

Solid waste management ordinances clarified 1009

Studies:

Food processing by-product recycling 880

State and local government

recycling and waste management plan 1066(40)

Studies:

Air contaminant emission tax levy 850

Defensive Driving—Citation Dismissal Task Force 1065

Food processing by-product recycling 880

Hazardous waste management 1078(2.7)

Nurse midwifery education program 1066(49)

Prenatal care needs assessment 1066(49)

Small/individual system water/wastewater needs 1078(2.1)(1)

State and local government

recycling and waste management plan 1066(40)

Waste discharge to surface waters tax levy 850

Waste stream analysis 1066(40)

Wastewater Treatment Plant Operators Certification

Commission organization, powers, duties 850

Water and Sewer Systems:

Chemical and portable toilets—

sewage treatment and disposal 1075

Sanitary sewage system installation/operator

certification effective date delayed 850

Studies:

Small and individual system

water and wastewater needs 1078(2.1)(1)

Waste discharge to surface waters tax levy 850

Waste stream analysis 1066(40)

Wastewater Treatment Plant Operators Certification

Commission organization, powers, duties 850

Wastewater discharge notification 951; 1075(6)

Wastewater Treatment Plant Operators Certification

Commission sanitary sewage system representation ... 850

Wastewater treatment violation penalties 951; 1075(6)

Water and Air Resources Board

replaced by Environmental

Management Commission 1004(43); 1075(3)

Water discharge permit requirements 1037

Water pollution civil penalty assessments 1036

Water quality criminal penalties 1045; 1075(8)

Water resources definition—technical amendment 1024(34)

Water transfer moratorium 954

Water treatment facility penalties—

technical amendment 1024(18)

Watershed classification technical amendment 1024(1)

Environment, Health, and Natural Resources,**State Department of:—continued****Water and Sewer Systems:—continued**

- Watershed reclassifications—development of landfills
for nonhazardous solid waste disposal delayed 1014
- Well construction civil penalty assessments 1036

Environmental Review Commission:

- Air contaminant emission tax levy 850
- Hazardous waste facility resident inspectors 1082
- Waste discharge to surface waters tax levy 850
- Wastewater Treatment Plant Operators Certification
Commission organization, powers, duties 850

Ethics:

- Judicial conduct investigations 995
- Legislative statements of economic interest—
certification and availability 890

Exceptional Children—see Children With Special Needs**F****Family, Commission on the—technical amendment . . . 1024(24)****Farmers Markets:**

- Piedmont Triad Market funds 1074(2)
- Raleigh Farmers Market reserve funds 1074(7)
- Southeastern Farmers Market funds 1074(2), (3)

Fees:

- Corporate annual report filing fee increased 1057

Environment:

- CAMA permit and compliance activities . . 987; 1066(53)(a)
- Dam construction/removal application fees 976; 1066(53)(c)
- Erosion control plan approval fees 906; 1066(53)(b)
- Hazardous waste facility resident inspectors 1082
- Mining permit application fees 944; 1066(53)(d)
- Nuclear facility annual fee increased 964; 1066(53)(e)
- Rest home resident complimentary fishing licenses 926
- Superfund lien filing notices 1047
- Water column leases for aquaculture within
recognized shellfish franchises authorized 958

Federal lien registration 1047**Indigent persons' attorney fees 946; 1066(125), (127)(e)****Insurance:**

- Insurance Department exemption from filing fees 1069
- Insurance fees and charges 1069
- Long-term care insurance license fee 941
- Medicare supplement insurance license fee 941
- Third party administrator filing fee 1055
- Motor vehicle inspection fee disbursements 1066(33)

Occupational licenses:

- Barber license fees increased 1029

Fees:—continued**Occupational licenses:—continued**

Crematory operator licensure	988
Electrolysis license fees	1033
Fire sprinkler contractor licensure requirements ...	842, 978
Food and lodging facility fees	1064; 1066(53)(f)
Funeral license fees increased	968
Proprietary school license and regulation fees	877, 1030
Psychologist license fees increased	1029
Probation and parole supervision fees increased	1034
Raleigh downtown parking facility fee deposits with State Treasurer to offset appropriation	1066(17)
Raleigh employee appeals—civil service commission award of attorney fees and costs unauthorized	817
Service of process fees increased	1044
Solid waste disposal fee limitations clarified	1009
Solid waste fee collection procedures:	
Alleghany County	905
Anson County	1017
Burke County	974
Caswell County	905
Cleveland County	938
Duplin County	940
Gaston County	974
Haywood County	1007
Lee County	974
Lenoir County	974
Montgomery County	1017
Pender County	1007
Polk County	938
Richmond County	905
Surf City	1007
Transylvania County	938
Washington County	974
Watauga County	905
Solid waste management authorities	888; 1004; 1075(5)
Tax refund anticipation loans	881
Tax refund debt setoff procedures	946

Ferries—current operations appropriations	1066(4)
---	---------

Festivals, Etc.:

Celebration 1991 activities	1066(56)
UNC centennial celebration funds	1066(81)

Fines and Penalties:

Athlete agent regulation	865
Bingo regulations	826
Cleveland County unlawful ambulance requests	834
Dangerous dogs—precautions, penalties, liability	1023

Fines and Penalties:—continued**Environment:**

Air pollution civil penalty assessments	1036
Air quality criminal penalties increased	1045
Civil penalty assessments	1036
Criminal penalties increased	1045; 1075(8)
Dam safety civil penalty assessments	1036
Hazardous substance criminal penalties	1045; 1075(8)
Hazardous waste criminal penalties	1045
Littering—magistrate and clerk of court guilty plea jurisdiction limited	1041
Mining penalties—technical amendment	1024(16)
OSHA civil penalties increased	844
Oil discharge civil penalty assessments	1036
Oil discharge criminal penalties	1045; 1075(8)
Wastewater treatment violations	951; 1075(6)
Water pollution civil penalty assessments	1036
Water quality criminal penalties	1045; 1075(8)
Water treatment facility penalties— technical amendment	1024(18)
Well construction civil penalty assessments	1036
Fish and Fishing—see that heading	
Hunting—see that heading	
Insurance fraud reporting and investigation	1054
Motor vehicles:	
Defensive Driving—Citation Dismissal Task Force	1065
Handicapped parking penalties	1052
Headlights required when operating windshield wipers ...	822
Restitution—see that heading	
School uniform reporting system fines limited	1066(106)
Taxes:	
Long Beach occupancy tax penalty compromise/forgiveness	857
Property tax payments—bad check penalties	1005
Tax refund anticipation loan violations	881

Firearms—see Weapons**Firefighting:**

Bald Head Island fire protection—water supply and water pressure contracts; special assessments	925
Cary Firemen's Supplemental Retirement Benefit Fund— receipts, eligibility, increased maximum benefits	924
Death Benefits Act technical amendment	1024(32)
Edenton smoke detectors in residential dwelling units	829
Fire incident reports	1054
Fire prevention inspector standards and certificates	1021
Fire sprinkler contractor licensure requirements	842, 978
Firemen's Pension Fund reduction	1074(7)
Harnett County fire protection district boundaries	932

Firefighting:—continued

High Point Firemen's Pension and Disability Fund—	
maximum benefits increased	920
Lexington Firemen's Supplemental Retirement Fund—	
maximum benefits increased	931
Oxford property conveyance for fire department	833
Raleigh Firemen's Supplemental Retirement Fund—	
maximum benefits increased	917
Randolph County rural fire protection districts	993
Rescue Squad Workers' Relief Fund:	
Administration costs	1066(33)
Board of Trustee appointments	1066(33)
Motor vehicle inspection fee receipts	1066(33)
Richfield rural fire protection district election	943
State-owned property local fire protection compensation	1069
Union County fire plow operation funds	1066(46)
Volunteer Rescue/EMS Fund:	
Fire and Rescue Commission funds	1066(33)
Grant eligibility	1066(33)
Motor vehicle inspection fee receipts	1066(33)
Windsor Firemen's Local Relief Fund—	
excess proceeds for firefighting equipment	930

Fish and Fishing:

Age seventy sportsman combination license	909
Aquaculture water column leases—	
technical amendment	1024(22)
Aquaculture water column leases within	
recognized shellfish franchises authorized	958
Boating—see that heading	
Dams—see that heading	
Ice sales tax exemption	1068
Lake Michael hook/line fishing by Mebane residents	843
Lake Rim Fish Hatchery funds	1066(47)
Navigable water land claim resolution period extended	869
Pisgah Forest Fish Hatchery visitor center funds	1066(47)
Rest home resident complimentary fishing license	926
Shellfish cultivation lease terminations delayed	958
Shellfish sanitation lab facility funds	1074(3)

Foods and Beverages:

Alcoholic Beverages—see that heading	
Charlotte/Mecklenburg food/beverage sales tax refunds	
to certain nonprofit and governmental entities	922
Egg promotion tax for processed eggs	1001
Farmers Markets—see that heading	
Fish and Fishing—see that heading	
Food and lodging facility fees	
for public health programs	1064; 1066(53)(f)
Food processing by-product designations	880

Foods and Beverages:—continued

Food stamp outreach program	1066(63)(b)
Ice sales tax exemption repealed	1068
Nutrition—see that heading	
Religious organization food sales and use tax exemption ...	1060
Restaurant privilege license tax simplified	1073
School nutrition staff development funds	1066(104)
Strawberry Assessment Act	1027
Strawberry marketing and research grant-in-aid	1074(6)
Study—food processing by-product recycling	880

Forestry:

Buxton Woods funds	1066(39); 1074(3)
County headquarters funds	1074(2)
Mecklenburg County ranger funds	1066(46)
Pisgah Forest Fish Hatchery visitor center funds	1066(47)
Trees—see that heading	
Union County fire plow operation funds	1066(46)
Union County ranger funds	1066(46)
Youthful Offenders Forestry Program capital facilities ...	935(5)

Forsyth County:

Kernersville, Town of—see that heading	
Land condemnation/acquisition by local governments outside county requires consent of commissioners	1061
Occupancy tax levy authorized	870
Utility commission eminent domain procedures	849
Winston-Salem, City of—see that heading	

Foster Care—block grant funds	1066(6)
--	----------------

Fuels:

Accelerated tax payments	813; 814; 945; 1066(11)
Bladen County gas line construction	839
Diesel fuel user tax annual reports	1050
Fuel distributor and supplier bond requirements	908
Fuel ethanol distillery tax credit sunset extended	814
Fuel sales tax exemption for small power producers	989
Mobile plan response project legal service funds	1066(136)
Motor carrier fuel use tax annual reports	1050
Natural gas service regulatory authority	962
Nuclear facility annual fee increased for emergency response activities	964; 1066(53)(e)
Oil discharge civil penalty assessments	1036
Oil discharge criminal penalties increased	1045; 1075(8)
Tax distributions to local governments 813; 814; 945; 1066(11)	
Utilities—see that heading	

Funerals:

Burial—see that heading	
Cemeteries—see that heading	
Cremation—see that heading	
Funeral license fees increased	968

Future Strategies for North Carolina, Joint Legislative Commission on—creation	1066(23)
---	----------

G

Games (see also Sports):**Bingo:**

Beach bingo prize limits	826
Proceeds for charitable purposes	826
Waterslide insurance limitation sunset repealed	914

Garbage—see Solid Waste

Garner, Town of—voluntary satellite annexations	872
--	-----

Gaston County:

Bessemer City, City of—see that heading	
Gastonia, City of—see that heading	
Register of deeds vacancies	1056
Solid waste fee collection	974

Gastonia, City of—motor vehicle tax increased	1016
--	------

Gates County:

Bear hunting season extended in certain areas	807
Correctional center wastewater treatment system shared with schools	1066(120)

General Assembly:

Appointments—see that heading	
Appropriations—General Fund	1066(3)
Art in State Buildings Committee membership	1024(23)(b)
Budget restructuring study committee created	1078(2.6)
Convening of regular session deferred	1066(21)
Governmental Operations, Joint Legislative Commission on:	
Reviews and Reports:	
Budget and Management:	
Budget deviations	1066(8)
Federal block grant budgeted increases	1066(6)(c)
Negative budget reserve management flexibility	1066(7)
Corrections:	
Community penalties programs	1066(132)(b)
Inmate road crew performance audit	1066(122)
Prison and youth services facilities projects	935
Prison construction projects	933
Southern Appalachia Mainstream grant funds	1066(119)
Substance abuse detention center private-sector contract	1066(121)
Summit House	1066(129)
Economic and Community Development:	
Employment Security Commission local office operations	1066(58)(b), (e), (f)

General Assembly:—continued

Governmental Operations,

Joint Legislative Commission on:—continued

Reviews and Reports:—continued

Economic and Community Development:—continued

Employment services program 1066(58)(b)

Job Training Partnership Act distributions 1066(6)(d)

Job training program for unemployed

and working poor 1066(58)(a), (c), (d)

Manufacturing directory proceeds 1066(57)

Rural Economic Development Center

activities 1066(59), (60); 1074(6), (33)

Unemployment insurance program 1066(58)(b)

Veterans unemployment program 1066(58)(b)

Education:

Electronic data processing audits 1066(105)

Student transportation system savings . . . 1066(96)(d)

Uniform education reporting system 1066(105)–(106)

Environment, Health, and Natural Resources:

CAMA permit program 987; 1066(53)(a)

Dam safety program 976; 1066(53)(c)

Erosion control plan

approval program 906; 1066(53)(b)

Food and lodging facility fees

for public health programs 1064; 1066(53)(f)

Hazardous waste facility resident inspectors 1082(2)

Mining permit program 944; 1066(53)(d)

Nurse midwifery education program 1066(49)(b)

Pisgah Forest Fish Hatchery visitor center 1066(47)

Prenatal care needs assessment 1066(49)(c)

Water resources development projects 1074(3), (34)

Human Resources:

Community action agency programs 1066(71)

Prenatal care needs assessment 1066(49)(c)

Prison and youth services facilities projects 935

Study—State law enforcement agencies 1078(VIII)

Highway Oversight Committee attendance costs 1074(37)

Internship Council allocation of summer interns 900

Legislative session study committee created 1078(2.6)

Mileage reimbursements 1066(24)

Open Government Through Public Telecommunications

Study Commission created 1078(VI)

President of the Senate's appointments

to various boards and commissions 1048

President Pro Tempore's membership on Senate

Pensions and Retirement Committee not required 899

Retirement—see that heading

Salaries and Benefits—see that heading

Speaker's appointments to various public offices 1038

General Assembly:—continued

Statements of economic interest—

certification and availability 890

Studies—see that heading

Genetics—genetic screening contract funds 1066(9)**Governor:**

Appointments:

Agricultural Finance Authority 1000, 1074(32)

Basic Education Program,

Legislative Study Commission on the 1066(99)

Crematory Authority established 988

Economic Future Study Commission 1066(22)

Electrolysis Examiners Board 1033

Handicapped Children from Birth to Five Years of Age,

Interagency Coordinating Council for 1003

LRC Higher Education Opportunity

Study Committee 1066(85)

Plumbing, Heating, and Fire Sprinkler

Contractors Board of Examiners 842, 978

Radiation Protection Commission membership 1004(41)

Real Estate Appraisal Board 827(8), (13)

Sentencing and Policy Advisory Commission 1076

State Ports Authority membership and terms 1072

Teaching Fellows Commission 1038(19)

Appropriations—General Fund 1066(3)

Budget and Management, Office of State—see that heading

Granville County—Oxford school property

conveyance for city hall and fire department 833

Greenlevel, Town of—incorporation 942**Greensboro, City of:**

General fund appropriation voting requirements 896

Recall petition procedures 896

Greenville, City of—parking authority membership 912**Group Homes:**

Block grant funds 1066(6)

Burlington Ralph Scott Group Homes land conveyance 832

Cerebral Palsy group home funds 1074(6)

HUD developmentally disabled group home funds 1074(6)

HUD mentally ill group home funds 1074(6)

Studies:

Veterans Home LRC Study Committee 1078(2.1)(3)

Veterans Home Study Commission 1074(20)

Growth Management:

Economic Future Study Commission:

Budget stabilization reserve 1066(10)

Creation 1066(22)

Growth Management:—continued

- Future Strategies for North Carolina,
Joint Legislative Commission on—creation 1066(23)

Guardians:

- Definition—technical amendment 1024(26)(a)
- Guardian ad litem appointment provisions clarified 851
- Judgment debtor debt setoff procedures 946

Guilford County:

- Greensboro, City of—see that heading
- High Point, City of—see that heading
- Stokesdale, Town of—see that heading

H**Handicapped—see Disabled Persons****Handicapped Children from Birth to Five Years of Age,**

- Interagency Coordinating Council for—creation 1003

Harnett County:

- Fire protection district boundaries 932
- Land condemnation/acquisition by local government
outside county requires consent of commissioners 973

Haywood County:

- Land condemnation/acquisition by local government
outside county requires consent of commissioners 973
- School personnel pay date 820
- Solid waste fee collection 1007

Hazardous Substances:

- Asbestos removal reserve funds 1074(2)
- Hazardous substance criminal penalties 1045; 1075(8)
- Hazardous Waste—see that heading
- Lead-based paint poisoning block grant funds 1066(6)
- Low-Level Radioactive Waste—see that heading
- Nuclear facility annual fee increased
for emergency response activities 964; 1066(53)(e)
- Radiation Protection Commission membership 1004(41)

Hazardous Waste:

- Hazardous waste criminal penalties increased 1045
- Hazardous waste facility permitting funds 1066(52)
- Hazardous waste facility resident inspectors 1082
- Study—hazardous waste management 1078(2.7)
- Technical amendments 1024(30)(a)–(b), (31)

Health Care Facilities:

- Continuing Care Facilities—see that heading
- Health Departments—see that heading
- Home Health Care—see that heading
- Hospitals—see that heading
- Nursing Homes—see that heading

Health Care Facilities:—continued

Respite Care—see that heading

Rest Homes—see that heading

Health Departments:

Block grant funds 1066(6)

Disabled dependent certification for tax purposes 984(5)

Drug dispensing by nurses 1004(2); 1075(4)

Obstetrical care plans 1066(49)

Henderson County:

Private road names in unincorporated areas 836, 854

Land condemnation/acquisition by local government

outside county requires consent of commissioners 973

Land subdivision regulation authority 863

Laurel Park, Town of—see that heading

Hertford County—Ahoskie motor vehicle tax increase 893**High Point, City of:**

Board of education election procedures 804

Firemen's Pension and Disability Fund—

maximum benefits increased 920

Underground electrical wiring assessments 919

Zoning procedures 918

Higher Education:

Colleges and Universities—see that heading

Community Colleges—see that heading

Proprietary Schools—see that heading

Tuition—see that heading

University of North Carolina—see that heading

Highway Oversight Committee, Joint Legislative:

Disadvantaged business contracts 1066(143)

Subsistence and travel expenses 1074(37)

Highways—see Roads and Highways**Historic Preservation:**

C.H. Brown State Historic Site funds 1074(2), (11)

Celebration 1991 activities 1066(56)

Historic districts and landmarks—

technical amendment 1024(40)

Indian Cultural Center funds 1074(2), (18)

Latham House matching funds eliminated 1066(20)

Old Fort Branch Museum

capital improvements 1066(19)

Spencer Shops—Round House renovations 1074(2), (11)

Washington County museum curator funds

from local newspaper microfilming grant 1066(18)

Ziegler House renovation funds 1074(2), (11)

Home and Community Care

Advisory Committee—appointments 1004(57); 1075(7)

Home Health Care:

- Block grant funds 1066(6)
- Home and Community Care
 - Advisory Committee appointments 1004(57); 1075(7)

Horticulture—NCSU facility funds 1074(3)**Hospitals:**

- Broughton Hospital funds 1066(3); 1074(11)
- Cabarrus Memorial Hospital private nonprofit status 982
- Cherry Hospital funds 1066(3)
- Dorothea Dix Hospital funds 1066(3)
- Durham County Hospital extension of time to
 - file application for sales and use tax refund 999
- ECU MRI facility leases 1066(86)
- Education to students confined in hospitals 1066(92)
- John Umstead Hospital funds 1066(3), (74)
- Medical services corporation directors,
 - officers, and employees—limited liability 1071
- Mental health facility quality assurance
 - committee confidentiality; liability 1053
- UNC Hospitals at Chapel Hill:
 - Current operations appropriations 1066(3)
 - Neuropsychiatric Hospital financing 965
 - Sales and use tax refunds for
 - contract and grant fund expenditures 936
 - Technical amendment 1024(27)

Hotels and Motels:

- Food and lodging facility fees
 - for public health programs 1064; 1066(53)(f)
- Occupancy Taxes—see Taxes and Assessments
- Restaurant privilege license tax simplified 1073
- Study—bed and breakfast inn regulation 1078(2.2)

Housing:

- Building Codes—see that heading
- Burlington Habitat for Humanity land conveyance 831
- Celebration 1991 activities 1066(56)
- Charlotte housing authority terms 835
- Charlotte housing code appeals board voting 859
- Community development block grant funds 1066(6)
- Discrimination—see that heading
- Fair housing law conforming amendments 979
- Foreclosure sale technical amendment 1024(11.1)
- Group Homes—see that heading
- Homeless mental health services block grant funds 1066(6)
- Housing Trust Fund funds 1074(6)
- Indian Housing Authority not treated as
 - State agency to qualify for federal assistance 1066(15)
- Lead-based paint poisoning block grant funds 1066(6)
- Migrant housing inspection program funds 1066(61)

Housing:—continued

Mortgage interest payment tax deduction error corrected . . .	984
Raleigh fair housing provisions	816
Real Estate—see that heading	
Studies:	
Veterans Home LRC Study Committee	1078(2.1)(3)
Veterans Home Study Commission	1074(20)
Winston-Salem fair housing ordinance amendments	864
Zoning—see that heading	

Human Relations Council—changed to

Human Relations Commission	979
--------------------------------------	-----

Human Resources, State Department of:**Appropriations:**

Block grant funds	1066(6)
Budgeted costs of local programs	1066(75)

Capital improvements:

Broughton Hospital steam plant modifications . .	1074(11)
General Fund	1074(3)
Murdock Center cottage renovation	1074(3)

Current operations:

Abortion Fund limitations	1066(79)
ADAP transportation reimbursement	1066(66)
Aging, Division of	1066(3), (6)
Alcoholic rehabilitation centers	1066(3)
Area mental health pilot program	1074(31)
Black Mountain Center	1066(3)
Blind, Division of Services for the	1066(3), (6)
Broughton Hospital	1066(3)
Caswell Center	1066(3)
Cherry Hospital	1066(3)
Chronically mentally ill	1066(73)
Community action programs	1066(71)
Day care abuse/neglect investigation	1066(69)
Day care rates	1066(68)
Deaf and blind schools	1066(3)
Domiciliary rate increase	1066(78)
Dorothea Dix Hospital	1066(3)
Eastern regional detoxification services	1066(65)
Elderly and needy funds	1074(30)
Facility Services, Division of	1066(3), (6)
Food stamp outreach program	1066(63)(b)
General Fund	1066(3)
Head Start funds	1074(30)
HUD group homes	1074(6)
Infant mortality reduction	1066(63)
John Umstead Hospital	1066(3), (74)
McLeod Center residential drug program	1066(76)
Medicaid for pregnant women and children . . .	1066(72)

Human Resources, State Department of:—continued**Appropriations:—continued****Current operations:—continued**

- Medicaid funds for administration activities 1066(62)
- Medicaid services and payment bases 1066(70)
- Medicaid transportation services 1066(63)(a)
- Medical assistance 1066(3)
- Mental health, developmental disabilities,
and substance abuse services 1066(3), (6)
- Mental health accounting system 1066(69)
- Murdock Center 1066(3)
- N.C. Special Care Center 1066(3)
- O'Berry Center 1066(3)
- Pioneer funding project 1066(69)
- Prescription drug reimbursement change 1074(29)
- Rest home aide training rules suspension 1066(77)
- Social services 1066(3), (6)
- Specialized residential center bed conversions 1066(67)
- Vocational rehabilitation services 1066(3)
- Western Carolina Center 1066(3)
- Willie M. reporting date changed 1066(64)
- Youth Services, Division of 1066(3), (6)
- Nonrecurring State aid 1074(6)
- Community action programs transferred from
Department of Economic and Community
Development 1004(35); 1066(6), (71); 1075(4)
- Continuing care facility regulation—
technical amendment 1024(45)
- Handicapped child early intervention,
developmental services, and education 1003
- Handicapped Children from Birth to Five Years of Age,
Interagency Coordinating Council for—creation 1003
- Home and Community Care
Advisory Committee appointments 1004(57); 1075(7)
- Job Opportunities and Basic Skills Program—
employment for welfare recipients 1066(58)(c), (d)
- Mental health technical amendments 1024(26),
(27), (27.1), (35)
- Prison and youth services facilities bond referendum 935
- Reports:
 - Community action agency programs 1066(71)
 - Job Opportunities and Basic Skills Program
employment for welfare recipients 1066(58)(c), (d)
 - Prison and youth services facilities projects 935
 - Willie M. reporting date changed 1066(64)
- Studies:
 - Child support enforcement 1066(126)
 - Child support guidelines 1067

Human Resources, State Department of:—continued**Studies:—continued****Mental Health Study Commission—**

substance abuse treatment in prisons 1076(5)

Rest home aide training 1066(77)

Social Services Plan reporting date extended 868

Hunting:

Age seventy sportsman combination license 909

Anson County fox seasons established 879

Bertie County deer hunting regulations 809

Currituck Sound migratory wildfowl protections 808

Dare County bear hunting seasons 837

Davidson County firearm and pellet gun ordinances 852

Davie County firearm and pellet gun ordinance 929

Edgecombe County deer hunting and transportation 972

Gates County bear hunting season 807

Madison County deer hunting regulations 809

Martin County firearm and rifle prohibitions 810

Mitchell County fox hunting prohibitions 811

Stanly County fox seasons established 879

Warren County land registration; entry permits 897

Watauga County roadside hunting prohibitions 812

Hyde County—Ocracoke Island boating access area 1066(47)**I****Indians:**

Indian Cultural Center funds 1074(2), (18)

Indian Housing Authority not treated as

State agency to qualify for federal assistance 1066(15)

Low Income Energy Block Grant funds 1066(6)

Indigents:

Capital case resentencing funds 1066(123)

Debt setoff procedures 946

Indigent judgment liens 946

Indigent persons' attorney fees 946; 1066(125), (127)(e)

Poverty project grant 1074(6)

Infant Mortality:

Celebration 1991 infant mortality program funds 1066(56)

Food stamp outreach program 1066(63)(b)

Infant mortality reduction efforts 1066(49)

Maternal and child health services funds 1066(6)(c)

Medicaid services funds 1066(63)

Medicaid transportation services 1066(63)(a)

Nutrition—see that heading

Pregnancy—see that heading

Prenatal care needs assessment 1066(49)(c)

Sudden Infant Death Syndrome block grant funds 1066(6)

Infractions:

Defensive Driving—Citation Dismissal Task Force	1065
Handicapped parking maximum fine increased	1052
Handicapped parking sign penalty designations	1052
Headlights required when operating windshield wipers	822

Inspections:

Fire prevention inspector standards and certificates	1021
Hazardous waste facility resident inspectors	1082
Motor vehicle inspection fee disbursements	1066(33)
Proprietary school license and regulation fees	877, 1030
Sanitation—see that heading	
Utilities Commission inspector vehicles not required to be equipped with bells and sirens	1020

Insurance:

Consumer Protection Fund created	1069
Fees and charges	1069
Fraud reporting and investigation	1054

Health:

Confidentiality of medical records	1021
Long-term care insurance license requirements	941
Medical services corporation directors, officers, and employees—limited liability	1071
Medical support for minor children— court orders and agreements	1067
Medicare supplement insurance law amendments	941
Medicare supplement insurance license requirements	941
Study—health insurance pool	1078(2.1)(2)
Teachers' and State Employees' Comprehensive Major Medical Plan—see that heading	

Insurance law substantive and technical amendments	1021
--	------

Liability:

Department of Environment, Health, and Natural Resources health care employee insurance	1066(41)
Public school teacher liability protection	1066(116)

Motor Vehicles:

Defensive Driving—Citation Dismissal Task Force	1065
Inexperienced operator premium surcharge	1021
Nonfleet private passenger motor vehicle physical damage	1021
Rented vehicle property damage	1021
Multiple employer welfare arrangement registration	1055
Retaliatory premium tax law amendments	1069
Solvency reporting and investigation	1054; 1055
Studies:	
Defensive Driving—Citation Dismissal Task Force	1065
Health insurance pool	1078(2.1)(2)
Multiple employer welfare arrangements	1055(5)
Third party administrator financial responsibility	1055

Insurance:—continued

- Unemployment insurance program funds 1066(58)(b)
- Warranties—see that heading
- Waterslide insurance limitation sunset repealed 914
- Workers Compensation—see that heading

Insurance, State Department of:**Appropriations:**

- Consumer Protection Fund 1069(24)
- General Fund 1066(3)
- Local fire protection for State-owned property 1069
- Filing fee exemptions 1069
- Fire incident reports 1054
- Insurance fees and charges 1069

Rescue Squad Workers' Relief Fund:

- Administration costs 1066(33)
- Board of Trustee appointments 1066(33)
- Motor vehicle inspection fee receipts 1066(33)

State-owned property local fire protection 1069**Studies:**

- Defensive Driving—Citation Dismissal Task Force 1065
- Health insurance pool 1078(2.1)(2)
- Multiple employer welfare arrangements 1055(5)

Volunteer Rescue/EMS Fund:

- Fire and Rescue Commission funds 1066(33)
- Grant eligibility 1066(33)
- Motor vehicle inspection fee receipts 1066(33)

Interest:

- Delayed accrual of interest
 - on certain unpaid property taxes 960
- Mortgage interest payment tax deduction error corrected ... 984

Internships:

- Internship Council allocation of summer interns 900
- Rural economic development internships 1066(84)

Investigations:

- Day care abuse/neglect investigator funds 1066(69)
- Drugs—see that heading
- Insurance fraud and solvency 1054
- Judicial conduct investigations—confidentiality 995
- State Bureau of Investigation (SBI)—
 - see Law Enforcement/Officers
- State employee appeals; disciplinary actions 1025

Investments—see Securities**Iredell County—see Statesville, City of**

J

- Jackson County**—land condemnation/acquisition
by local governments outside county requires
consent of county commissioners 973
- Jails**—see Correctional Institutions
- Judges**—see Courts
- Judgments**—see Civil Procedure
- Justice, State Department of:**
Appropriations:
Capital improvements:
General Fund 1074(2), (3), (4)
Justice Academy classroom building 1074(3)
SBI Complex 1074(2), (4)
Current operations:
General Fund 1066(3)
Mobile plan response project legal services ... 1066(136)
SBI contract positions from lapsed salaries ... 1066(137)
SBI salary adjustment 1066(135)
Defensive Driving—Citation Dismissal Task Force 1065
State Bureau of Investigation (SBI)—
see Law Enforcement/Officers
- Juvenile Code**—see Courts
- Juveniles**—see Minors

K

- Kernersville, Town of**—property conveyance 983
- Kindergarten:**
Head Start funds 1074(30)
Study—Joint Legislative
Education Oversight Committee created 1066(115)

L

- Labor, State Department of:**
Appropriations—General Fund 1066(3)
Job training funds for
unemployed and working poor 1066(58)(c), (d)
Migrant housing inspection program funds 1066(61)
OSHA civil penalties increased 844
Report—job training funds for
unemployed and working poor 1066(58)(c), (d)
- Laboratories:**
Agronomics lab funds 1074(2)
Drug offender restitution for SBI lab facilities 1039

Laboratories:—continued

Rockingham Community College	
lab/classroom building funds	1074(2)
Shellfish sanitation lab facility funds	1074(3)

Landfills—see Solid Waste

Laurel Park, Town of—corporate limits revised	878
--	------------

Law Enforcement/Officers:

Armory construction funds	1074(3)
Cherokee County security district referendum	1049
Criminal justice agency definition—	
technical amendment	1024(4)
Death Benefits Act—technical amendment	1024(32)
DMV vehicles equipped with bells and sirens	1020
Driving track funds	1066(134)
Drug arrest reports	814
Drug offender restitution for SBI lab facilities	1039
Drug tax distributions to investigating agencies	1039
Grand jury drug trafficking investigations extended	1039
Highway Patrol position budget adjustments	1066(133)
Justice Academy classroom building funds	1074(3)
Oath of office	953
Omnibus Drug Act	1039
Pender County weapon permits issued by sheriff	910
Precursor chemical possession and distribution	
with intent to manufacture illegal drugs prohibited	1039
Retirement—see that heading	
Salaries and Benefits—see that heading	
Speed Limits—see that heading	
State Bureau of Investigation (SBI):	
Contract positions from lapsed salaries	1066(137)
Drug offender restitution for SBI lab facilities	1039
Salary adjustment	1066(135)
SBI Complex funds	1074(2), (4)

Studies:

Defensive Driving—Citation Dismissal Task Force	1065
SBI overtime compensation	1066(135)
State law enforcement agencies	1078(VIII)

Laws Amended or Repealed:**1883 Private Laws:**

Chapter 93	895
------------------	-----

1909 Private Laws:

Chapter 158	884
Chapter 382	895

1911 Private Laws:

Chapter 398	895
-------------------	-----

1911 Public-Local Laws:

Chapter 585	895
-------------------	-----

Laws Amended or Repealed:—continued

1925 Private Laws:	
Chapter 100	878
1927 Private Laws:	
Chapter 232	864
1929 Private Laws:	
Chapter 57	975
1935 Public-Local Laws:	
Chapter 307	982
1939 Public-Local Laws:	
Chapter 296	1026
1947 Session Laws:	
Chapter 90	883
1949 Session Laws:	
Chapter 1141	895
Chapter 1184	816
1951 Session Laws:	
Chapter 212	895
Chapter 557	975
1955 Session Laws:	
Chapter 1121	895
1957 Session Laws:	
Chapter 368	1063
Chapter 411	902
Chapter 967	895
Chapter 1014	895
Chapter 1436	808
1959 Session Laws:	
Chapter 680	920
Chapter 718	947
Chapter 721	1026
Chapter 896	895
Chapter 1073	910
Chapter 1137	896
1961 Session Laws:	
Chapter 1	895
Chapter 524	920
Chapter 799	1035
Chapter 831	957
Chapter 909	957
1963 Session Laws:	
Chapter 67	846
1965 Session Laws:	
Chapter 1	895
Chapter 565	1026
Chapter 650	957

Laws Amended or Repealed:—continued**1967 Session Laws:**

Chapter 112	1042
Chapter 481	921
Chapter 540	895
Chapter 738	895

1969 Session Laws:

Chapter 240	1042
Chapter 397	1026
Chapter 421	917
Chapter 617	957
Chapter 935	895

1971 Session Laws:

Chapter 147	819
-------------------	-----

1973 Session Laws:

Chapter 213	896
Chapter 258	837
Chapter 566	804

1973 Session Laws (Second Session 1974):

Chapter 896	1063
Chapter 958	957

1975 Session Laws:

Chapter 317	886
Chapter 504	917
Chapter 561	816
Chapter 574	969

1977 Session Laws:

Chapter 13	812
Chapter 211	895
Chapter 212	1035
Chapter 289	855

1979 Session Laws:

Chapter 125	1063
Chapter 170	921
Chapter 328	917
Chapter 382	1042
Chapter 582	837

1979 Session Laws (Second Session 1980):

Chapter 1197	1046
Chapter 1319	836, 854, 911

1981 Session Laws:

Chapter 40	1063
Chapter 137	998
Chapter 149	1042
Chapter 241	817
Chapter 283	973, 1061
Chapter 568	836, 854, 911
Chapter 608	864
Chapter 906	931

Laws Amended or Repealed:—continued**1983 Session Laws:**

Chapter 98	836, 854, 911
Chapter 299	836, 854, 911
Chapter 339	1063
Chapter 405	998
Chapter 462	931
Chapter 908	821, 857, 870, 922

1983 Session Laws (Regular Session 1984):

Chapter 939	998
Chapter 985	857
Chapter 1028	857

1985 Session Laws:

Chapter 33	870
Chapter 159	924
Chapter 433	839
Chapter 435	841
Chapter 479	1066(79), (103)
Chapter 480	1074(15)
Chapter 502	993
Chapter 776	979
Chapter 778	1066(20)

1985 Session Laws (Regular Session 1986):

Chapter 838	1046
Chapter 843	1039(4)
Chapter 924	870
Chapter 940	993
Chapter 943	887
Chapter 1014	1066(19)

1987 Session Laws:

Chapter 131	837
Chapter 198	860
Chapter 222	856
Chapter 226	829
Chapter 235	993
Chapter 249	809
Chapter 420	998
Chapter 499	1063
Chapter 605	986
Chapter 738	1066(79)
Chapter 747	1024(39)
Chapter 806	967
Chapter 830	1066(18)
Chapter 864	914

1987 Session Laws (Regular Session 1988):

Chapter 900	836, 854, 911
Chapter 906	836, 854, 911
Chapter 935	857
Chapter 954	875

Laws Amended or Repealed:—continued**1987 Session Laws (Regular Session 1988):—continued**

Chapter 959	993
Chapter 960	932
Chapter 995	967
Chapter 1018	828
Chapter 1040	1039(4)
Chapter 1048	1066(17)
Chapter 1073	1066(12)
Chapter 1086	1066(27)
Chapter 1100	1066(47), (49); 1078(V)

1989 Session Laws:

Chapter 8	1066(132)
Chapter 38	895
Chapter 64	1078(V)
Chapter 129	1004
Chapter 146	1004
Chapter 168	1004; 1024(31)
Chapter 187	1024(44)
Chapter 213	979
Chapter 239	1024(37)
Chapter 253	818
Chapter 265	1057; 1066(32)
Chapter 266	913
Chapter 286	1004; 1024(30)
Chapter 325	1024(42)
Chapter 335	836, 854, 911
Chapter 354	1004
Chapter 399	820
Chapter 423	1004; 1024(22)
Chapter 426	1004; 1024(1)
Chapter 448	868
Chapter 453	1024(33)
Chapter 455	916
Chapter 488	956
Chapter 500	1066(14), (44), (58)(b), (59), (64), (66), (68), (70), (71), (72), (78), (79), (80), (132), (140); 1074(29), (32)
Chapter 588	1024(9)
Chapter 591	905, 938, 940, 974, 1017
Chapter 630	827
Chapter 641	1024(17)
Chapter 692	1024(46); 1066(144)
Chapter 706	1024(40)
Chapter 714	1057
Chapter 727	1004
Chapter 740	1024(41); 1078(2.4)
Chapter 751	1004; 1024(47)

Laws Amended or Repealed:—continued**1989 Session Laws:—continued**

Chapter 752	1024(2); 1066(8), (13), (25), (34), (41), (43), (58)(a), (65), (67), (70), (72), (78), (86), (88), (98), (103), (104), (129), (138), (142); 1074(21), (25), (29); 1077(17); 1078(VIII)
Chapter 754	1066(40), (47), (134); 1074(30)
Chapter 756	1004; 1024(48), (49)
Chapter 758	1024(45)
Chapter 764	1004
Chapter 770	1024(44), (46)(b); 1066(59)
Chapter 778	1066(97)
Chapter 795	1066(126), (128)
Chapter 799	1066(40), (56), (135), (141)
Chapter 802	1024(24); 1076(5); 1078(III)

1989 Session Laws (Regular Session 1990):

Chapter 813	945; 1066(11)
Chapter 814	945
Chapter 821	922
Chapter 823	1024(27.1)
Chapter 842	978
Chapter 888	1004; 1075(5)
Chapter 898	1066(131)
Chapter 906	1066(53)(b)
Chapter 944	1066(53)(d)
Chapter 951	1075(6)
Chapter 964	1066(53)(e)
Chapter 987	1066(53)(a)
Chapter 1004	1075
Chapter 1045	1075(8)
Chapter 1064	1066(53)(f)
Chapter 1066	1074(16)(a), (30); 1077(17)

Lee County:

Land condemnation/acquisition by local government outside county requires consent of commissioners	973
Solid waste fee collection	974

Legislature—see General Assembly**Leland, Town of—annexation repealed** 961**Lenoir, City of—Lower Creek flood control funds** 1074(34)**Lenoir County—solid waste fee collection** 974**Lexington, City of—Firemen's Supplemental**

Retirement Fund maximum benefits increased	931
--	-----

Liability:

Asheboro city manager's authority to settle claims	921
Charlotte city manager's authority to settle claims	862
Dangerous dogs	1023

Liability:—continued

Department of Environment, Health, and Natural Resources health care employee insurance	1066(41)
Employing minor to commit drug law violation—	
civil liability for drug addiction	1081
Fire incident reports—immunity from liability	1054
Insurance fraud and solvency reporting	
and investigation—immunity from liability	1054
Medical services corporation directors,	
officers, and employees—limited liability	1071
Mental health facility quality assurance committees	1053
Rural Obstetrical Care Incentive Program funds	1066(49)
Teacher liability protection funds	1066(116)
Third party administrator financial responsibility	1055

Libraries:

ECU Joyner Library addition funds	1074(2)
Johnston Community College library renovations	1074(2)
Legislative statements of economic interest—	
certification and availability	890

Licenses and Permits:**Environment:**

Air emissions permit requirements	1037
CAMA permit/compliance activities	987; 1066(53)(a)
Dam construction/removal application fees	976; 1066(53)(c)
Erosion control plan approval fees	906; 1066(53)(b)
Hazardous waste facilities	1066(52)
Low-level radioactive waste facilities	1066(52)
Mining permit application fees	944; 1066(53)(d)
Nuclear facility annual fee increased	
for emergency response activities	964; 1066(53)(e)
Study—food processing by-product recycling	880

Fish and Fishing—see that heading

Hunting—see that heading

Insurance:

Consumer Protection Fund created	1069
Fees and charges	1069
Fraud and solvency reporting and investigation	1054
Insurance law substantive and technical amendments ..	1021
Long-term care insurance license requirements	941
Medicare supplement insurance law amendments	941
Medicare supplement insurance license requirements	941
Multiple employer welfare arrangement registration	1055
Retaliatory premium tax law amendments	1069
Study—multiple employer welfare arrangements	1055(5)
Third party administrator financial responsibility	1055
Marriage licenses—register of deeds distribution	
of pamphlet on substance abuse during pregnancy	1039
Motor Vehicles—see that heading	

Licenses and Permits:—continued**Occupations:**

Athlete agent regulation	865
Barber fees increased	1029
Barber school bond requirements	824
Cosmetic art school bond requirements	824
Cosmetologist temporary employment permits	1013
Crematory operator licensure	988
Dentistry—see that heading	
Electrolysis licensure	1033
Fire prevention inspector standards and certificates	1021
Fire sprinkler contractor licensure requirements ...	842, 978
Food and lodging facility fees	
for public health programs	1064; 1066(53)(f)
Fuel distributor and supplier bond requirements	908
Funeral license fees increased	968
Nurses aide training program bond requirements	824
Pharmacy Board per diem allowance increased	825
Proprietary school licensure/regulation	824, 877, 1030
Psychologist license fees increased	1029
Restaurant privilege license tax simplified	1073
Study—cosmetic arts regulation	1078(IV)
Pender County weapon permits issued by sheriff	910
Railroad license tax repealed	1002

Real Estate:**Real Estate Appraisal Committee:**

Board redesignation	827
Membership and appointments	827(8), (13)
Regulatory authority	827
Voluntary appraiser certification	827
State property real estate appraisals	827(4), (12)

Reports:

CAMA permit program annual report	987; 1066(53)(a)
Dam safety program biennial report	976; 1066(53)(c)
Erosion control plan approval program ...	906; 1066(53)(b)
Insurance fraud and solvency	1054
Mining permit program annual report	944; 1066(53)(d)

Studies:

Cosmetic arts regulation	1078(IV)
Food processing by-product recycling	880
Multiple employer welfare arrangements	1055(5)
Wastewater Treatment Plant Operators Certification	
Commission organization, powers, duties	850

Tax refund anticipation loan regulations	881
--	-----

Water and Sewer Systems:

Aquaculture water column leases	958; 1024(22)
Pool and spa permit exemptions—	
technical amendment	1024(33)
Raleigh stormwater regulation ordinances	1043

Licenses and Permits:—continued**Water and Sewer Systems:—continued**

Sanitary sewage system installation/operator
certification effective date delayed 850

Study—Wastewater Treatment Plant Operators Certification

Commission organization, powers, duties 850

Wastewater Treatment Plant Operators Certification

Commission sanitary sewage system representation ... 850

Water discharge permit requirements 1037

Watershed reclassifications—development of landfills

for nonhazardous solid waste disposal delayed 1014

Workers' Compensation Security Fund assessment 985

Licensing Boards, Legislative Committee on New—

cosmetic arts regulation study 1078(IV)

Liens:

Federal lien registration 1047

Judgment debtor debt setoff procedures 946

Superfund lien filing notices 1047

Lieutenant Governor:**Appointments:**

Administrative Rules Review Commission 1038(18)

Agricultural Finance Authority 1000, 1074(32)

Birth—Related Neurological Impairment

Study Commission 1078(V)

Sentencing and Policy Advisory Commission 1076

State Ports Authority membership and terms 1072

Teaching Fellows Commission 1038(19)

Various boards and commissions 1048

Appropriations—General Fund 1066(3)

Literacy:

Celebration 1991 activities 1066(56)

Community college budget guidelines 1066(90)

Littering—magistrate and clerk of court

guilty plea jurisdiction limited 1041

Loans:

Agricultural Finance Authority re-established 1000; 1074(32)

Foreclosure sale technical amendment 1024(11.1)

Mortgage interest tax deduction error corrected 984

Solid waste management loan program—

technical amendments 1024(38), (48), (49)

Tax refund anticipation loan regulations 881

Tuition—see that heading

Long Beach, Town of—occupancy tax penalty forgiveness 857

Long View, Town of—

annexation of certain described property 1019

Low-Level Radioactive Waste:

Low-level radioactive waste facility permitting funds . .	1066(52)
Site selection funds	1074(2)

Lumberton, City of—economic development

conveyance prospective revenue considerations	913
---	-----

M**Macon County:**

Airport authority established	955
Economic development prospective revenue considerations	913
Industrial park land conveyance exemptions	998

Madison County:

Deer hunting regulations—technical correction	809
Land condemnation/acquisition by local government outside county requires consent of commissioners	973

Marriage and Family:

Abortion—see that heading	
Adoption—probationary time between interlocutory decree and final order for private adoptions	977
Birth Certificates—see that heading	
Child Abuse—see that heading	
Child Custody—see that heading	
Child Support—see that heading	
Day Care—see that heading	
Domestic Abuse—see that heading	
Family, Commission on the—technical amendment . . .	1024(24)
Foster care block grant funds	1066(6)
Marriage licenses—register of deeds distribution of pamphlet on substance abuse during pregnancy	1039
Pregnancy—see that heading	

Martin County:

Firearm and rifle prohibitions	810
Land condemnation/acquisition by local governments outside county requires consent of commissioners	1061
Williamston, Town of—see that heading	

McDowell County—property reconveyance 833**Mebane, City of—Lake Michael hook and line fishing 843****Mecklenburg County:**

Charlotte, City of—see that heading	
Food and beverage sales tax refunds to certain nonprofit and governmental entities	922
Pineville, Town of—see that heading	
Ranger funds	1066(46)
Room occupancy tax distribution	821

Medicaid:

AIDS drug reimbursement eligibility standards	1066(44)
Coverage for pregnant women and children	1066(72)
Funds for administrative activities	1066(62)
Medical assistance funds	1066(3)
Non-Medicaid reimbursement	1066(44)
Prescription drug reimbursement change	1074(29)
Services and payment bases	1066(70)
Transportation services	1066(63)(a)

Medical Examiners—

Statewide Medical Examiner System funds	1066(43)
---	----------

Medical Malpractice:

Department of Environment, Health, and Natural Resources health care employee liability insurance	1066(41)
Rural Obstetrical Care Incentive Program funds	1066(49)
Study—Birth-Related Neurological Impairment Study Commission continued	1078(V)

Medical Records:

Confidentiality of medical records in the possession of the Department of Insurance	1021
Confidentiality of mental health facility quality assurance committee proceedings	1053

Medicare:

Medicare supplement insurance law amendments	941
Medicare supplement insurance license requirements	941

Mental Health:

ADAP transportation reimbursement	1066(66)
Area mental health pilot program funds	1074(31)
Block grant funds	1066(6)
Children With Special Needs—see that heading	
Chronically mentally ill funds	1066(73)
Disabled Persons—see that heading	
Hospitals—see that heading	
Medicaid services and payment bases	1066(70)
Mental health, developmental disabilities, and substance abuse services funds	1066(3), (6)
Mental health accounting system funds	1066(69)
Mental health facility quality assurance committee confidentiality; liability	1053
Persons dangerous to themselves or others defined	823
Specialized residential center bed conversion funds ...	1066(67)
Studies:	
Birth-Related Neurological Impairment Study Commission continued	1078(V)
Infrastructure bonds	1078(2.1)(5)
Mental Health Study Commission— substance abuse treatment in prisons	1076(5)

Mental Health—continued

Substance Abuse—see that heading

Technical amendments 1024(26), (27), (27.1), (35)

Mental Health Study Commission—

substance abuse treatment in prisons 1076(5)

Microelectronics—Microelectronics Center funds 1066(3)**Migrants**—migrant housing inspection program funds . . . 1066(61)**Mining**:

Civil penalty assessments—technical amendment 1024(16)

Mining permit application fees 944; 1066(53)(d)

Report—mining permit program 944; 1066(53)(d)

Minors:

Abortion—see that heading

Adoption—probationary time between interlocutory

decree and final order for private adoptions 977

Alcohol and Drug Abuse and

Mental Health Services Block Grant funds 1066(6)

Child Abuse—see that heading

Child Custody—see that heading

Child Support—see that heading

Children With Special Needs—see that heading

Children's special health services funds 1074(7)

Community-based substance abuse

prevention program funds 1066(6)

Day Care—see that heading

Disabled children block grant funds 1066(6)

Employing minor to commit drug law violation 1081

Foster care block grant funds 1066(6)

Guardians—see that heading

Handicapped child early intervention,

developmental services, and education 1003

Handicapped Children from Birth to Five Years of Age,

Interagency Coordinating Council for—creation 1003

Handicapped education safeguard activities by Department

of Environment, Health, and Natural Resources exempt

from administrative hearings 1004(36); 1075(4)

Infant Mortality—see that heading

IMPACT program for youthful offenders 1010

Job Training Partnership Act block grant funds 1066(6)

Juvenile judgment debtor debt setoff procedures 946

Kindergarten—see that heading

Marriage licenses—register of deeds distribution

of pamphlet on substance abuse during pregnancy 1039

Maternal and child health services funds 1066(6)

Medicaid for pregnant women and children 1066(72)

N.C. Fund for Children block grant funds 1066(6)

Pregnancy—see that heading

Prison and youth services facilities bond referendum 935

Minors:—continued

Report—Willie M. reporting date changed	1066(64)
Sexual exploitation of a minor	1022
Social Services Block Grant funds	1066(6)
Study—Birth—Related Neurological Impairment	
Study Commission continued	1078(V)
Victims compensation extended for certain minors	898
Youth Services, Division of—funds	1066(3), (6)

Mitchell County:

Bakersville, City of—see that heading	
Fox hunting prohibitions	811

Mocksville, Town of—extraterritorial planning jurisdiction 853**Montgomery County:**

Land condemnation/acquisition by local governments	
outside county requires consent of commissioners	1061
Solid waste fee collection	1017

Morehead City, Town of—harbor dredging funds 1074(34)**Motor Vehicles:**

Ahoskie motor vehicle tax maximum amount increased	893
Buses—see that heading	
Diesel fuel user tax annual reports	1050
DMV vehicles equipped with bells and sirens	1020
Driver training program funding	1066(144)
Driving While Impaired (DWI)—see that heading	
EMS support vehicles equipped with lights and sirens	1020
Gastonia motor vehicle tax maximum amount increased ...	1016
Headlights required when operating windshield wipers	822
Inspection fee disbursements	1066(33)
Insurance—see that heading	
Motor carrier fuel use tax annual reports	1050
Motor vehicle damage disclosures	916
Motor vehicle salvage title law clarified	916
Motor vehicle use tax revenue—	
technical amendment	1024(46)(a)
Motorcycle safety instruction program tax receipts	830
Parking—see that heading	
Releasing of motor vehicles prohibited	1011
Roads and Highways—see that heading	
Speed Limits—see that heading	
Studies:	
Defensive Driving—Citation Dismissal Task Force	1065
Drivers education	1066(145)
Technical amendments	1024(6), (7), (46)(a)
Utility inspection vehicles not required	
to be equipped with bells and sirens	1020
Wake County unmarked human service vehicles	856

Municipal Incorporations:

Badin incorporation	894
Bakersville corporate limits confirmed	927
Burlington land transfer to Town of Elon College	840
Charlotte corporate limits modified	939
Charters—see that heading	
Elm City corporate limits reduced	934
Elon College land transfer from City of Burlington	840
Greenlevel incorporation	942
Laurel Park corporate limits reduced	878
Pineville corporate limits modified	939
Stokesdale corporate boundaries redefined	956
Technical amendment	1024(25)

Museums:

Museum of Art landscaping funds	1074(2)
Museum of Natural Science planning funds	1074(3)
Museum of the Albemarle planning funds	1074(3)
Old Fort Branch Museum capital improvements	1066(19)
Washington County museum curator funds from local newspaper microfilming grant	1066(18)
Watercraft museum funds	1074(2)

N

Nags Head, Town of —park property description clarified	1004
---	------

Nash County:

Bailey, Town of—see that heading	
Industrial development funds	1063
Red Oak, Town of—see that heading	
School employee pay dates	903

New Hanover County:

Carolina Beach, Town of—see that heading	
Castle Hayne Horticultural Research Station funds	1074(3)
Shellfish sanitation lab facility funds	1074(3)
Wilmington, City of—see that heading	

Newspapers and Magazines:

Economic development publication costs	1066(55)
Industrial promotional advertising	1066(57)
Manufacturing directory proceeds	1066(57)(b)
Washington County museum curator funds from local newspaper microfilming grant	1066(18)

Newton, City of —charter revised and consolidated	1042
--	------

Nursing:

Nurse midwife funds for underserved counties	1066(50)
Nurses aide training program bond requirements	824
Nurses authorized to dispense drugs recommended by Department of Environment, Health, and Natural Resources at local health departments	1004(2); 1075(4)

Nursing:—continued

Rural Obstetrical Care Incentive Program funds	1066(49)
Studies:	
Nurse midwifery education program	1066(49)
Prenatal care needs assessment	1066(49)
UNC nurse midwifery education programs	1066(83)

Nursing Homes:

Continuing care facility regulation—	
technical amendment	1024(45)
Long-term care insurance license requirements	941
Medicaid services and payment bases	1066(70)
Specialized residential center bed conversions	1066(67)

Nutrition:

Food stamp outreach program	1066(63)(b)
Maternal and child health services	
block grant reimbursements for contracted	
local health department nutritional services	1066(6)
School nutrition staff development funds	1066(104)
WIC nutritional supplements needs assessment	1066(49)

O

Oaths:

Insurance fraud punishments	1054
Law enforcement officer oath of office	953
Pender County board of education oath of office	1008

Obstetrics—see Pregnancy**Older Adults:**

Adult day care funds	1066(6)
Aging, Division of—funds	1066(3), (6)
Block grant funds	1066(6)
Continuing Care Facilities—see that heading	
Elderly and needy funds	1074(30)
Home Health Care—see that heading	
Hunting—fishing age seventy	
sportsman combination license	909
Medicaid—see that heading	
Medicare—see that heading	
Nursing Homes—see that heading	
Respite Care—see that heading	
Rest Homes—see that heading	
Retirement—see that heading	

Open Government Through Public Telecommunications

Study Commission—creation	1078(VI)
-------------------------------------	----------

Orange County:

Chapel Hill, Town of—see that heading	
Mebane, City of—see that heading	

Oxford, City of—school property	
conveyance for city hall and fire department	833

P

Parking:

Greenville parking authority—	
increase in commissioners authorized	912
Handicapped parking maximum fine increased	1052
Handicapped parking sign penalty designations	1052
Parking lot repair reserve funds	1074(8)
Raleigh downtown parking facility fee deposits	
with State Treasurer to offset appropriation	1066(17)

Parks and Recreation:

Cherokee County recreation district referendum	1049
Forestry—see that heading	
Jockey's Ridge State Park property description clarified . . .	1004
Lumber River park ranger funds	1066(45)
Mecklenburg County ranger funds	1066(46)
State Park System funds	1074(2)
Study—infrastructure bonds	1078(2.1)(5)
Union County ranger funds	1066(46)

Parole—see Criminal Procedure

Partnerships:

Investment tax credit treatment when partnership has	
N.C. Enterprise Corporation as only general partner . . .	848
Investment tax credits extended to	
investments in N.C. Enterprise Corporation	848

Pasquotank County:

Airport authority membership increased	860
Elizabeth City, City of—see that heading	

Pender County:

Board of education oath of office	1008
Private road names in unincorporated areas	911
Sales tax revenue distribution	901
Solid waste fee collection	1007
Surf City—see that heading	
Topsail Beach, Town of—see that heading	
Watha, Town of—see that heading	
Weapon permits issued by sheriff	910

Pensions—see Retirement

Pharmacists—Pharmacy Board per diem allowances 825

Pilot Mountain, Town of—

extraterritorial zoning jurisdiction	861
--	-----

Pilot Programs:

Aquaculture development demonstration projects	958
Area mental health pilot program funds	1074(31)
Career development pilot project funding	1066(97), (107)
Community Work Experience Program demonstration project	966
Jail demonstration project funds	1066(6)
Lead teacher pilot project funding	1066(97), (107)
Pioneer funding project funds	1066(69)
Rural Economic Development Center pilot project funds	1066(59)
Southern Appalachia Mainstream pilot program	1066(119)
Substance abuse detention center private contract ...	1066(121)
Summit House	1066(129)

Pineville, Town of—corporate limits modified	939
--	-----

Pitt County:

ECU MRI facility leases	1066(86)
Economic development property conveyances	847
Greenville, City of—see that heading	

Plumbing and Heating Contractors Board of Examiners—

name, composition, and duties changed	
to include fire sprinkler contractor licensure	842, 978

Plymouth, Town of—Latham House

matching funds requirement eliminated	1066(20)
---	----------

Polk County:

Lake Adger “slow-no-wake” area technical correction	818
Solid waste fee collection	938

Pollution:

Air emissions permit requirements	1037
Air pollution civil penalty assessments	1036
Air quality criminal penalties increased	1045
Air Quality Section lapsed salary funds to correct error in budgeting federal receipts	1066(38)
Civil penalty assessments	1036
Coastal Resources—see that heading	
Fuels—see that heading	
Keep North Carolina Beautiful grant	1066(5)
Solid Waste—see that heading	
Study—air contaminant emission tax levy	850
Water and Sewer Systems—see that heading	

Ports:

State Ports Authority funds	1074(2)
State Ports Authority membership and terms	1072
State Ports development long-range planning funds ...	1074(3)
Study—infrastructure bonds	1078(2.1)(5)

Powers of Attorney—

certain powers of attorney made durable 992

Pregnancy:

Abortion Fund limitations 1066(79)

Adolescent pregnancy prevention program funds 1066(9)

Birth certificates—parent social security numbers 1004(6)

Drug sale or delivery to pregnant females 1081

Food stamp outreach program 1066(63)(b)

Infant Mortality—see that heading

Maternal and child health services funds 1066(6)

Medicaid for pregnant women and children 1066(72)

Medicaid transportation services 1066(63)(a)

Nurse midwife funds for underserved counties 1066(50)

Register of deeds distribution of pamphlet on substance

abuse during pregnancy with marriage license 1039

Richmond Community College childbirth classes 1066(87)

Rural Obstetrical Care Incentive Program funds 1066(49)

Studies:

Birth—Related Neurological Impairment

Study Commission continued 1078(V)

Nurse midwifery education program 1066(49)

Prenatal care needs assessment 1066(49)

UNC nurse midwifery education programs 1066(83)

WIC nutritional supplement needs assessment 1066(49)

Sudden Infant Death Syndrome block grant funds 1066(6)

Prisons—see Correctional Institutions**Prisons, Special Committee on:**

Termination 1076(5)

Transfer of duties to Sentencing

and Policy Advisory Commission 1076(5)

Transfer of substance abuse treatment in prisons

study to Mental Health Study Commission 1076(5)

Probation—see Criminal Procedure**Proprietary Schools:**

Barber school bond requirements 824

Cosmetic art school bond requirements 824

Electrology school certification 1033

Nurses aide training program bond requirements 824

Proprietary school bond requirements 824

Proprietary school license and regulation fees 877, 1030

Proprietary school regulation 877

Psychologists—license fees increased 1029**Public Health:**

Abortion—see that heading

Adult health care funds 1066(9)

Ambulances—see that heading

Birth Certificates—see that heading

Public Health:—continued

- Block grant funds 1066(6)
- Children—see Minors
- Clarifying, conforming, technical amendments 1004, 1075
- Continuing Care Facilities—see that heading
- Cosmetics—see that heading
- County health aid funds 1064; 1066(9), (53)(f)
- Death—see that heading
- Dentistry—see that heading
- Diseases—see that heading
- Drugs—see that heading
- Electrolysis—see that heading
- Emergency Medical Services—see that heading
- Genetics—see that heading
- Health Care Facilities—see that heading
- Health Departments—see that heading
- Home Health Care—see that heading
- Hospitals—see that heading
- Infant Mortality—see that heading
- Insurance—see that heading
- Medicaid—see that heading
- Medical Examiners—see that heading
- Medical Malpractice—see that heading
- Medical Records—see that heading
- Medicare—see that heading
- Nursing—see that heading
- Nursing Homes—see that heading
- Nutrition—see that heading
- Pharmacists—see that heading
- Pregnancy—see that heading
- Report—food and lodging facility
 - fees for public health programs 1064; 1066(53)(f)
- Rescue Squads—see Emergency Medical Services
- Respite Care—see that heading
- Rest Homes—see that heading
- Sanitation—see that heading
- Studies:
 - Bed and breakfast inn regulation 1078(2.2)
 - Birth-Related Neurological Impairment
 - Study Commission continued 1078(V)
 - Cosmetic arts regulation 1078(IV)
 - Health insurance pool 1078(2.1)(2)
 - Nurse midwifery education programs 1066(49), (83)
 - Prenatal care needs assessment 1066(49)
 - Prescription drug assistance 1078(2.3)
 - Rest home aid training 1066(77)
 - Substance abuse treatment in prisons 1076(5)
- Substance Abuse—see that heading

Public Health:—continued

- UNC Area Health Education Center funds 1066(3); 1074(2)
- Vital records funds 1066(9)

Public Officials:

- Appointments—see that heading
- Retirement system amendments 1024(28); 1066(35)(b);
1077(13)–(16); 1080(1)
- Pender County board of education oath of office 1008
- Solid waste management authority membership defined 888
- Trent Woods compensation of municipal officers 947

Public Records:

- Legislative statements of economic interest—
certification and availability 890

R**Radiation Protection Commission—membership 1004(41)****Radio—Radio Emergency Association Citizens**

- Team (REACT) community college tuition waiver 915

Radioactive Waste—see Low-Level Radioactive Waste**Railroads:**

- Aid to railroads 1066(3)
- Franchise/license/privilege tax repealed 1002

Raleigh, City of:

- Employee appeals—civil service commission
award of attorney fees and costs unauthorized 817
- Fair housing provisions for aged and handicapped 816
- Farmers Market reserve funds 1074(7)
- Firemen's Supplemental Retirement Fund—
maximum benefits increased 917
- Parking facility fee deposits with
State Treasurer to offset appropriation 1066(17)
- Stormwater regulation ordinances 1043

Randolph County:

- Asheboro, City of—see that heading
- Rural fire protection districts 993

Real Estate:

- Building Codes—see that heading
- Fair housing law conforming amendments 979
- Federal lien registration 1047
- Foreclosure sale technical amendment 1024(11.1)
- Housing—see that heading
- Human Relations Council changed
to Human Relations Commission 979
- Raleigh fair housing provisions 816
- Real Estate Appraisal Committee:
Board redesignation 827

Real Estate:—continued**Real Estate Appraisal Committee:—continued**

Membership and appointments	827(8), (13)
Regulatory authority	827
Voluntary appraiser certification	827
State property real estate appraisals	827(4), (12)
Vested rights established upon approval of site specific and phased development plans	996
Winston-Salem fair housing ordinance amendments	864
Zoning—see that heading	

Recordation of Instruments:

Athlete agent regulation	865
Birth certificates—parent social security numbers	1004(6)
Business Corporation Act:	
Annual reporting requirement delayed	1066(32)
Implementation reserve funds	1074(7)
Technical amendments	1024(3), (12.1)–(12.26)
Certain powers of attorney made durable	992
Charter suspension notification requirements	1024(19)
Corporate annual report filing fee increased	1057
Federal lien registration	1047
Insurance Department exemption from filing fees	1069
Insurance fees and charges	1069
Legislative statements of economic interest— certification and availability	890
Marriage licenses—register of deeds distribution of pamphlet on substance abuse during pregnancy	1039
Registers of Deeds—see that heading	
Security registration and filing exemptions	803
Superfund lien filing notices	1047
Titles—see that heading	
Uniform Commercial Code technical amendments	1024(8)
Unlawful use of banking terms by businesses	805
Vital record funds	1066(9)

Recycling—see Solid Waste**Red Oak, Town of—board of commissioners terms** 1035**Redistricting—1990 census municipal**
redistricting rules and procedures 1012**Referendums—see Elections****Registers of Deeds:**

Ashe County register of deeds vacancies	1056
Gaston County register of deeds vacancies	1056
Marriage licenses—distribution of pamphlet on substance abuse during pregnancy	1039
Surry County register of deeds vacancies	1056
Watauga County register of deeds vacancies	1056

Reidsville, City of—charter revised and consolidated 957

Reports:

Administration—disadvantaged business
participation in public procurement contracts 1051

Auditor:

Community penalties programs audit 1066(132)

Inmate road crew performance audit 1066(122)

Budget and Management:

Budget deviations 1066(8)

Budget reduction continuations 1066(7)(e)

Federal block grant budgeted increases 1066(6)(c)

Negative budget reserve management flexibility .. 1066(7)(c)

Prison and youth services facilities projects 935

Prison construction projects 933

Community Colleges—budget guidelines 1066(90)

Contracts and Purchases:

Disadvantaged business participation
in public procurement contracts 1051

Substance abuse detention center
private-sector contract 1066(121)

Corrections:

Community penalties programs audit 1066(132)

Inmate road crew performance audit 1066(122)

Prison and youth services facilities projects 935

Prison construction projects 933

Southern Appalachia Mainstream grant funds ... 1066(119)

Substance abuse detention center
private-sector contract 1066(121)

Summit House 1066(129)

Courts—debt setoff procedures 946

Crime Control and Public Safety—Summit House ... 1066(129)

Economic and Community Development:

Employment Security Commission

local office operations 1066(58)(b), (e), (f)

Employment services program 1066(58)(b)

Job Training Partnership Act distributions 1066(6)(d)

Job training program for

unemployed and working poor 1066(58)(a), (c), (d)

Manufacturing directory proceeds 1066(57)

Rural Economic Development Center

activities 1066(59), (60); 1074(6), (33)

Unemployment insurance program 1066(58)(b)

Veterans unemployment program 1066(58)(b)

Education:

Class size waivers/teacher positions 1066(113)

Education reports eliminated 1066(103)

Electronic data processing audits 1066(105)

School administrator salary schedule repealed 1074(25)

Reports:—continued**Education:—continued**

- School transportation system savings 1066(96)(d)
- Tech Prep program funds 1066(58)(c)–(d), (89)
- Uniform education reporting system 1066(105), (106)
- Willie M. reporting date changed 1066(64)

Environment, Health, and Natural Resources:

- CAMA permit program annual report 987; 1066(53)(a)
- Dam safety program biennial report 976; 1066(53)(c)
- Erosion control plan approval program 906; 1066(53)(b)
- Food and lodging facility fees
for public health programs 1064; 1066(53)(f)
- Hazardous waste facility resident inspectors 1082(2)
- Mining permit program annual report 944; 1066(53)(d)
- Pisgah Forest Fish Hatchery visitor center 1066(47)
- Water resources development projects 1074(3), (34)

Human Resources:

- Community action agency programs 1066(71)
- Job Opportunities and Basic Skills Program
assistance for welfare recipients 1066(58)(c), (d)
- Prison and youth services facilities projects 935
- Willie M. reporting date changed 1066(64)

Insurance:

- Fire incident reports 1054
- Insurance fraud reporting and investigation 1054
- Insurance solvency reporting and investigation 1054
- Multiple employer welfare arrangements 1055

Labor—job training for

- unemployed and working poor 1066(58)(c), (d)

Mental Health:

- Substance abuse detention center
private sector contract 1066(121)
- Willie M. reporting date changed 1066(64)

Public Health—food and lodging

- facility fees for public health programs 1064; 1066(53)(f)

Salaries and Benefits:

- School administrator salary schedule repealed 1074(25)
- Transportation—inmate road crew performance audit 1066(122)
- Treasurer—Supplemental Retirement Income Plan
eligibility for certain local government employees 948

Rescue Squads—see Emergency Medical Services**Respite Care—block grant funds 1066(6)****Rest Homes:**

- Continuing care facility regulation—
technical amendment 1024(45)
- Domiciliary rate increase 1066(78)
- Long-term care insurance license requirements 941

Rest Homes:—continued

Rest home resident complimentary fishing licenses	926
Study—rest home aide training	1066(77)

Restitution:

Drug offender restitution for SBI lab facilities	1039
Sentencing and Policy Advisory Commission created	1076
Victims Compensation—see that heading	

Retirement:

Cary Firemen's Supplemental Retirement Benefit Fund— receipts, eligibility, increased maximum benefits	924
Death Benefits Act—technical amendment	1024(32)
Disability Income Plan coverage to employees on leaves of absence receiving workers compensation benefits ...	1032
Federal retirement benefit inheritance tax exemption repealed	970
Firemen's Pension Fund reduction	1074(7)
Government retirement benefit tax credit	984
High Point Firemen's Pension and Disability Fund— maximum benefits increased	920
Judicial Retirement System increases	1077
Legislative Retirement System increases	1066(34); 1077
Lexington Firemen's Supplemental Retirement Fund— maximum benefits increased	931
Local Governmental Employees' Retirement System: Conversions to disability benefits	1080
Retirement formula increased	1077
Technical amendments	1024(23)(a), (28)
Raleigh Firemen's Supplemental Retirement Fund— maximum benefits increased	917
Reciprocity of creditable service between State and local retirement systems	1066(35)
Rescue Squad Worker's Pension Fund reduction	1074(7)
Rescue Squad Workers' Relief Fund: Administrative costs	1066(33)
Board of Trustees appointments	1066(33)
Motor vehicle inspection fee receipts	1066(33)
Retired State law enforcement officer State Health Plan eligibility	1074(22)
Senate Pensions and Retirement Committee— President Pro Tempore membership not required	899
Sheriffs who withdrew service prior to creation of Sheriffs' Supplemental Pension Fund	1079
Study—retirement benefit inheritance tax exemptions	970
Supplemental Retirement Income Plan: Eligibility for certain local government employees	948
Technical corrections	948
Teachers' and State Employees' Retirement System increases	1077

Retirement:—continued

- University Employees' Optional Retirement Program
 - employer contribution rate increased . . . 1066(34); 1077(17)
- Winston-Salem policemen's retirement fund investments 1026

Revenue, State Department of:

- Accelerated employer withholding
 - tax payment workload reserve 1074(7)
- Appropriations—General Fund 1066(3); 1074(7)
- Debt setoff procedures 946
- Employer withholding payment workload reserve funds 1074(7)
- Inventory tax local government
 - reimbursement adjustment 1066(29)
- Mail order sales and use taxes:
 - Deposit in General Fund 1066(27)
 - Distributions to local governments 1066(27)
- New Revenue Building funds 1074(2)
- School capital funding from nonrecurring funds 1066(28)
- Taxes and Assessments—see that heading

Richfield, Town of:

- Delinquent utility bill collection procedures 1070
- Rural fire protection district election 943

Richmond County—solid waste fee collection 905**Roads and Highways:**

- Anticipated revenues authorized 1066(140), (141)
- Bridge debris removal by
 - Department of Transportation 1066(139)
- Capital improvement project funds 1074(8)
- Construction contract retainage deposits 1074(38)
- Henderson County private road names 836, 854
- Highway construction
 - disadvantaged business contracts 1066(143)
- Highway Patrol—see Law Enforcement/Officers
- Inmate road crew performance audit 1066(122)
- Motor vehicle use tax revenue—
 - technical amendment 1024(46)(a)
- Motor Vehicles—see that heading
- Pender County private road names 911
- Residential street light special assessments 923
- Right-of-way dedications—technical amendment 1024(39)
- Signs—see that heading
- Special appropriations repealed 1066(142)
- Speed Limits—see that heading
- Studies:
 - Drivers education 1066(145)
 - Highway Oversight Committee, Joint Legislative:
 - Disadvantaged business contracts 1066(143)
 - Subsistence and travel expenses 1074(37)
 - Infrastructure bonds 1078(2.1)(5)

Roads and Highways:—continued

- Transportation computing center position funds 1066(138)
- Utility infrastructure right-of-way acquisition 962

Robeson County:

- Lumberton, City of—see that heading
- St. Pauls, Town of—see that heading
- School funding procedures modified 986

Rockingham County:

- Eden, City of—see that heading
- Land condemnation/acquisition by local government
outside county requires consent of commissioners 973
- Reidsville, City of—see that heading

Rowan County—land condemnation/acquisition by

- local governments outside county requires consent
of county commissioners 1061

Rutherford County:

- Airport authority lease of property to the State 955
- Forestry headquarters funds 1074(2)

S**St. Pauls, Town of—town administrator powers and duties 902****Salaries and Benefits:**

- Air Quality Section lapsed salary funds
to correct error in budgeting federal receipts 1066(38)

Community colleges:

- Flexible compensation plans 1059
- Salary increase funds 1066(90)
- Death Benefits Act—technical amendment 1024(32)
- Dental Examiners Board compensation modified 892

Disability Income Plan coverage to employees on leaves

- of absence receiving workers compensation benefits . . . 1032

Education:

- Differentiated pay plan allocation of funds 1066(107)
- Differentiated pay plan determinations 1074(23)
- Flexible compensation plans 1059
- Haywood County school personnel pay date 820
- Leave accumulation 1066(93)
- Nash County school employee pay dates 903
- School administrator salary schedule repealed 1074(25)
- School psychologist salary reclassification 1066(110)
- Uniform reporting system fines limited 1066(106)
- Immunization Branch line-item transfers 1066(42)
- Negative budget reserve management flexibility 1066(7)
- Pensions—see Retirement
- Raleigh employee appeals—civil service commission
award of attorney fees and costs unauthorized 817
- Retirement—see that heading

Salaries and Benefits:—continued

Reversion of unencumbered balances—
 fund commitment limitations 1066(26)

SBI contract positions funded by lapsed salaries 1066(137)

State employees:

Accelerated pay plan for
 lowest-paid State employees 1066(37)

Appeals 1025

Disciplinary actions 1025

Flexible compensation plans 1059

Performance advisory committees 1028

Performance appraisal system standards 1025

Performance pay plan funds 1074(21)

Severance pay clarification 1066(36)

Studies:

Noncertified school employee salaries 1066(108)

SBI overtime compensation 1066(135)

State law enforcement agencies 1078(VIII)

UNC position classifications 936(6)

Tax withholding requirements 945

Teachers' and State Employees'

Comprehensive Major Medical Plan—see that heading

Trent Woods compensation of municipal officers 947

University of North Carolina:

Flexible compensation plans 1059

Payroll deductions for charities and athletics 1066(82)

Water Quality Section lapsed salary funds

to correct error in budgeting federal receipts 1066(38)

Workers Compensation—see that heading**Sales and Leases:**

Aquaculture water column leases 958; 1024(22)

Asheboro lease of airport property 867

Burlington Habitat for Humanity land conveyance 831

Burlington Ralph Scott Group Homes land conveyance 832

Davie County board of education property conveyance 929

Foreclosure sale technical amendment 1024(11.1)

Incubator facility lease arrangement grants 952

Indian Cultural Center lease agreement 1074(2), (18)

Kernersville property conveyance 983

Macon County industrial park land conveyance 998

McDowell County property reconveyance 833

Motor vehicle releasing prohibited 1011

Oxford property conveyance

for city hall and fire department 833

Pitt County economic development property conveyances ... 847

Rutherford County airport authority lease of property 955

Shellfish cultivation lease terminations delayed 958

Sampson County:

Board of commissioners election procedures	969
Board of education election procedures codified	971
Clinton, City of—see that heading	
Great Coharie flood control funds	1074(34)
School construction deadline extended	1066(109)

Sanitation:

Barber inspection fees increased	1029
Barber school bond requirements	824
Chemical and portable toilets— sewage treatment and disposal	1075
Cosmetic art school bond requirements	824
Crematory operator licensure	988
Day care inspections—technical amendment	1024(21)
Electrolysis licensure	1033
Food and lodging facility fees for public health programs	1064; 1066(53)(f)
Funeral establishment reinspection fee	968
Migrant housing inspection funds	1066(61)
Shellfish sanitation lab facility funds	1074(3)
Study—bed and breakfast inn regulation	1078(2.2)
Water and Sewer Systems—see that heading	

Savings and Loan Associations—see Banking**Scholarships—see Tuition****Schools—see Education****Science and Technology:**

Biotechnology Center funds	1066(3); 1074(2)
Fayetteville Community College Technology Center funds	1074(2)
Microelectronics Center funds	1066(3)
National Institute of Statistical Sciences funds ...	1074(3), (35)
N.C. Science and Math High School funds	1066(3)
Roanoke-Chowan Community College technology center funds	1074(2)
Tech Prep program funds	1066(58)(c)–(d), (89)
Technological Development Authority—see that heading	

Seafood—see Fish and Fishing**Secretary of State, Department of the:**

Appropriations—General Fund	1066(3); 1074(7)
Athlete agent regulation	865
Business Corporation Act: Annual reporting requirement delayed	1066(32)
Implementation reserve funds	1074(7)
Technical amendments	1024(3), (12.1)–(12.26)
Charter suspension notification requirements	1024(19)
Corporate annual report filing fee increased	1057
Federal tax lien registration	1047

Secretary of State, Department of the:—continued

Publication inventory reduced	1066(31)
Security registration and filing exemptions	803
Statewide voter file repealed	1066(30)
Superfund lien filing notices	1047
Uniform Commercial Code technical amendments	1024(8)

Securities:

Bonds—see that heading

Business Corporation Act:

Annual reporting requirement delayed	1066(32)
Implementation reserve funds	1074(7)
Technical amendments	1024(3), (12.1)–(12.26)

Charter suspension notification requirements
 1024(19) |

Corporate intangibles tax dividend deductions
 814 |

Intangibles tax distributions to local governments 813; 1066(11)

Joint tenancy with right of survivorship
 891 |

N.C. Enterprise Corporation investment tax credits
 848 |

Security registration and filing exemptions
 803 |

Special State funds—authorized investments
 813 |

State Treasurer data processing funds
 1074(7) |

Subchapter S Corporation shareholder

loss carryforward tax deductions
 984 |

Uniform Commercial Code technical amendments
 1024(8) |

Unlawful use of banking terms by businesses
 805 |

Winston-Salem policemen's retirement fund investments 1026

Sentencing—see Criminal Procedure

Sentencing and Policy Advisory Commission—creation 1076

Sheriffs—see Law Enforcement/Officers

Signs:

Handicapped parking maximum fine increased
 1052 |

Handicapped parking sign penalty designations
 1052 |

Small Businesses:

Community college budget guidelines
 1066(90) |

Disadvantaged business participation

in public contracts
 1051; 1066(143) |

Incubator facility grants
 952 |

Roanoke-Chowan Community College

technology/small business center funds
 1074(2) |

Smoke Detectors—see Alarm Systems

Social Services:

Abortion Fund limitations
 1066(79) |

Adoptions—probationary time between interlocutory

decree and final order for private adoptions
 977 |

Block grant funds
 1066(6) |

Child Abuse—see that heading

Child Support—see that heading

County department of social services funds
 1066(6) |

Social Services:—continued

Current operations appropriations	1066(3)
Day Care—see that heading	
Debt setoff procedures	946
Elderly and needy program funds	1074(30)
Employment—see that heading	
Food stamp outreach program	1066(63)
Foster Care—see that heading	
Head Start funds	1074(30)
Home Health Care—see that heading	
Infant mortality reduction	1066(6)(c), (49), (56), (63)
Job Opportunities and Basic Skills Training Program:	
Assistance for welfare recipients	1066(58)(c), (d)
Social services statutes conforming amendments	966
Low Income Energy Block Grant funds	1066(6)
Medicaid—see that heading	
Nutrition—see that heading	
Older Adults—see that heading	
Respite Care—see that heading	
Rest Homes—see that heading	
State aid to non-State agencies	1066(3)
Studies:	
Child support enforcement	1066(126)
Energy Assurance Study Commission	1078(III)
Prenatal care needs assessment	1066(49)
Prescription drug assistance	1078(2.3)
Rest home aide training	1066(77)
Social Services Plan reporting date extended	868
Volunteer services block grant funds	1066(6)
Wake County unmarked human service vehicles	856

Social Services Study Commission—

Social Services Plan reporting date extended	868
--	-----

Solid Waste:

Bridge debris removal	
by Department of Transportation	1066(139)
Food processing by-product designations	880
Inactive hazardous sites—technical amendment 1024(30)(a)–(b)	
Littering—magistrate and clerk of court	
guilty plea jurisdiction limited	1041
Solid waste definition clarified	1009
Solid waste disposal fee limitations clarified	1009
Solid waste fee collection procedures:	
Alleghany County	905
Anson County	1017
Burke County	974
Caswell County	905
Cleveland County	938
Duplin County	940

Solid Waste:—continued**Solid waste fee collection procedures:—continued**

Gaston County	974
Haywood County	1007
Lee County	974
Lenoir County	974
Montgomery County	1017
Pender County	1007
Polk County	938
Richmond County	905
Surf City	1007
Transylvania County	938
Washington County	974
Watauga County	905

Solid waste management loan program—

technical amendments	1024(38), (48), (49)
----------------------------	----------------------

Solid waste management authorities 888; 1004; 1075(5)**Solid Waste Management Capital Projects Financing**

Agency Solid Waste Revolving Fund funds	1074(2)
---	---------

Solid waste management ordinances clarified 1009**Solid waste management recycling programs** 1009**Studies:**

Food processing by-product recycling	880
--	-----

Infrastructure bonds	1078(2.1)(5)
----------------------------	--------------

State and local government

recycling and waste management plan	1066(40)
---	----------

Waste stream analysis	1066(40)
-----------------------------	----------

Superfund lien filing notices 1047**Superfund program technical amendment** 1024(30)(c)**Waste reduction funds for technical assistance**

to local governments and industries	1066(51)
---	----------

Watershed reclassifications—development of landfills

for nonhazardous solid waste disposal delayed	1014
---	------

Speed Limits:

Defensive Driving—Citation Dismissal Task Force	1065
---	------

Speed-measuring instruments—technical amendment	1024(4)
---	---------

Speedometers required to be in good working order	822
---	-----

Sports (see also Games):

Athlete agent regulation	865
--------------------------------	-----

Fish and Fishing—see that heading**Hunting—see that heading**

UNC payroll deductions for charities and athletics ...	1066(82)
--	----------

Stanly County:**Badin, Town of—see that heading**

Fox seasons established	879
-------------------------------	-----

Richfield, Town of—see that heading

State Auditor, Department of the:

- Appropriations 1066(3); 1074(7)
- Community penalties programs audit 1066(132)
- Firemen's Pension Fund funds 1074(7)
- Inmate road crew performance audit 1066(122)
- Rescue Squad Worker's Pension Fund funds 1074(7)
- State information processing powers and duties 1024(36)

State Buildings:

- Art in State Buildings Committee membership 1024(23)(b)
- Asbestos removal reserve funds 1074(2)
- Contracts and Purchases—see that heading
- Government Complex new steam plant funds 1074(2)
- Projects on delayed status 1074(9)
- Raleigh downtown parking facility fee deposits
 - with State Treasurer to offset appropriation 1066(17)
- Repair and renovation reserve funds 1074(11)
- Restrictions on capital improvements 1074(10)(a)
- State property local fire protection funds 1069
- State property real estate appraisals 827(4), (12)
- Study—infrastructure bonds 1078(2.1)(5)

State Bureau of Investigation (SBI)—

see Law Enforcement/Officers

State Controller, Office of the:

- Appropriations 1066(3)
- Powers and duties—technical amendment 1024(37)

State Education Assistance Authority—see Tuition**State Employees:**

- Negative budget reserve management
 - flexibility—vacant positions 1066(7)
- Retirement—see that heading
- Salaries and Benefits—see that heading
- State employee appeals 1025
- Study—public attorney education assistance 1078(2.1)(4)
- Teachers—see Education
- Teachers' and State Employees'
 - Comprehensive Major Medical Plan—see that heading

State Infrastructure Needs and Financing

- Study Commission—local stormwater utility financing 1062

State Personnel—see Salaries and Benefits**State Treasurer, Department of the:**

- Appropriations 1066(3), (4); 1074(7)
- Driver training program funding 1066(144)
- Insurance Consumer Protection Fund created 1069
- Investment Management Division
 - data processing services 1074(7)
- Investments authorized for special funds 813

State Treasurer, Department of the:—continued

Local Special Revenue Fund mail order sales tax proceeds distributed to local governments	1066(27)
Prison and youth services facilities bond referendum	935
Prison construction bond issuance authorized	933
Raleigh downtown parking facility fee deposits with State Treasurer to offset appropriation	1066(17)
Report—Supplemental Retirement Income Plan eligibility for certain local government employees	948
State agency overdraft fees	1074(17)
State Special Revenue Fund mail order sales tax proceeds credited to General Fund	1066(27)

Statesville, City of:

Appointment and supervision of city clerk and city treasurer by city manager	855
Voluntary satellite annexation procedures	882

Stocks—see Securities**Stokes County—land condemnation/acquisition**

by local government outside county requires consent of county commissioners	973
--	-----

Stokesdale, Town of—corporate boundaries redefined 956**Streets—see Roads and Highways****Studies:**

Birth—Related Neurological Impairment Study Commission continuation	1078(V)
--	---------

Community Colleges:

Higher education opportunity	1066(85)
Interagency Defensive Driving— Citation Dismissal Task Force	1065

Corrections:

Community penalties programs audit	1066(132)
Prisons, Special Committee on: Termination	1076(5)
Transfer of duties to Sentencing and Policy Advisory Commission	1076(5)
Transfer of substance abuse treatment in prisons study to Mental Health Study Commission	1076(5)
Sentencing and Policy Advisory Commission	1076

Courts:

Child support enforcement	1066(126)
Child support guidelines	1067
Defensive Driving—Citation Dismissal Task Force	1065
Sentencing and Policy Advisory Commission	1076

Crime Control and Public Safety:

Community penalties programs audit	1066(132)
Defensive Driving—Citation Dismissal Task Force	1065

Studies:—continued**Economic and Community Development:****Rural Economic Development Center:**

Rural economic development grant program . . . 1066(84)

Rural economic development internships 1066(84)

Rural economic development scholarships 1066(84)

State and local government

recycling and waste management plan 1066(40)

UNC rural planning and

development degree programs 1066(84)

Waste stream analysis 1066(40)

Economic Future Study Commission:

Budget stabilization reserve 1066(10)

Creation 1066(22)

Education:**Basic Education Program,**

Legislative Study Commission on the 1066(99)

Class size waivers/teacher positions 1066(113)

Drivers education 1066(145)

Education Oversight Committee,

Joint Legislative 1066(99)(d), (115)

Education Study Commission:

Parental involvement in schools 1074(24)

School Improvement Act 1078(VII)

Higher education opportunity 1066(85)

Infrastructure bonds 1078(2.1)(5)

Instructional materials containing advertising . . . 1074(23)(d)

Noncertified employee salaries 1066(108)

Public attorney education assistance 1078(2.1)(4)

Task Force on Excellence in Secondary Education—

education governance structure 1074(26)

Year-round education 1074(27)

Energy Assurance Study Commission continued 1078(III)**Environment, Health, and Natural Resources:**

Defensive Driving—Citation Dismissal Task Force 1065

Food processing by-product recycling 880

Hazardous waste management 1078(2.7)

Nurse midwifery education program 1066(49)

Prenatal care needs assessment 1066(49)

State and local government

recycling and waste management plan 1066(40)

Waste stream analysis 1066(40)

Water resources development projects 1074(34)

Water and wastewater needs—

small and individual systems 1078(2.1)(1)

Environmental Review Commission:

Air contaminant emission tax levy 850

Hazardous waste facility resident inspectors 1082

Waste discharge to surface waters tax levy 850

Studies:—continued

Environmental Review Commission:—continued

Wastewater Treatment Plant Operators Certification

Commission organization, powers, duties 850

Family, Commission on the—technical amendment . . . 1024(24)

Future Strategies for North Carolina,

Joint Legislative Commission on—creation 1066(23)

Governmental Operations, Joint Legislative Commission on:

State law enforcement agencies 1078(VIII)

Handicapped Children from Birth to Five Years of Age,

Interagency Coordinating Council for 1003

Highway Oversight Committee, Joint Legislative:

Disadvantaged business contracts 1066(143)

Subsistence and travel costs 1074(37)

Human Resources, State Department of:

Child support enforcement 1066(126)

Prenatal care needs assessment 1066(49)

Prescription drug assistance 1078(2.3)

Rest home aide training 1066(77)

Social Services Plan reporting date extended 868

Insurance:

Health insurance pool 1078(2.1)(2)

Defensive Driving—Citation Dismissal Task Force 1065

Multiple employer welfare arrangements 1055(5)

Justice, State Department of:

Defensive Driving—Citation Dismissal Task Force 1065

SBI overtime compensation 1066(135)

Legislative Research Commission:

Bed and breakfast inn regulation 1078(2.2)

Bonds—infrastructure bonds 1078(2.1)(5)

Budget restructuring 1078(2.6)

Drivers education 1066(145)

Hazardous waste management 1078(2.7)

Health insurance pool 1078(2.1)(2)

Higher education opportunity 1066(85)

Inheritance tax exemptions 970

Legislative session 1078(2.6)

Prescription drug assistance 1078(2.3)

Public attorney education assistance 1078(2.1)(4)

Public transportation financing 1078(2.4)

Rest home aide training 1066(77)

Taxation:

Bed and breakfast inn regulation 1078(2.2)

Inheritance tax exemptions 970

Mail order sales taxes 1078(2.5)

Veterans Home 1078(2.1)(3)

Studies:—continued

Legislative Research Commission:—continued

Water and wastewater needs—	
small and individual systems	1078(2.1)(1)
Licensing Boards, Legislative Committee on New—	
cosmetic arts regulation	1078(IV)
Mental Health Study Commission:	
Substance abuse treatment in prisons	1076(5)
Open Government Through Public Telecommunications	
Study Commission	1078(VI)
Prisons, Special Committee on:	
Termination	1076(5)
Transfer of duties to Sentencing	
and Policy Advisory Commission	1076(5)
Transfer of substance abuse treatment in prisons	
study to Mental Health Study Commission	1076(5)
Public Health:	
Bed and breakfast inn regulation	1078(2.2)
Birth-Related Neurological Impairment	
Study Commission continuation	1078(V)
Cosmetic arts regulation	1078(IV)
Health insurance pool	1078(2.1)(2)
Nurse midwifery education program	1066(49), (83)
Prenatal care needs assessment	1066(49)
Prescription drug assistance	1078(2.3)
Rest home aide training	1066(77)
Salaries and Benefits:	
Noncertified school employee salaries	1066(108)
SBI overtime compensation	1066(135)
State law enforcement agencies	1078(VIII)
UNC position classifications	936(6)
Sentencing and Policy Advisory Commission	1076
Social Services Study Commission—	
Social Services Plan reporting date extended	868
State Infrastructure Needs and Financing Study Commission:	
Local stormwater utility financing	1062
Taxation:	
Air contaminant emission tax levy	850
Bed and breakfast inn regulation	1078(2.2)
Inheritance tax exemptions	970
Mail order sales taxes	1078(2.5)
Waste discharge to surface waters tax levy	850
Transportation:	
Defensive Driving-Citation Dismissal Task Force	1065
Disadvantaged business contracts	1066(143)
Drivers education	1066(145)
Highway Oversight Committee, Joint Legislative:	
Disadvantaged business contracts	1066(143)
Subsistence and travel costs	1074(37)

Studies:—continued**Transportation:—continued**

Public transportation financing 1078(2.4)

University of North Carolina:

Nurse midwifery education programs 1066(83)

Rural planning and development degree programs 1066(84)

UNC position classifications 936(6)

Veterans:

Veterans Home LRC Study Committee 1078(2.1)(3)

Veterans Home Study Commission 1074(20)

Substance Abuse:

Alcoholic rehabilitation center funds 1066(3)

Block grant funds 1066(6)

Driving While Impaired (DWI)—see that heading

Drugs—see that heading

Eastern regional detoxification service funds 1066(65)

Employing minor to commit drug law violation—

civil liability for drug addiction 1081

McLeod Center residential drug program funds 1066(76)

Mental health, developmental disabilities,

and substance abuse services funds 1066(3), (6)

Register of deeds distribution of pamphlet on substance

abuse during pregnancy with marriage license 1039

Study—substance abuse treatment in prisons 1076(5)

Substance abuse detention center

private sector contract 1066(121)

Substance abuse facility quality

assurance committee confidentiality; liability 1053

Women's Correctional Center

substance abuse facility funds 1074(2)

Sunset Beach, Town of—cable television line assessments 875**Surf City**—solid waste fee collection 1007**Surry County:**

Pilot Mountain, Town of—see that heading

Register of deeds vacancies 1056

Swain County—land condemnation/acquisition

by local government outside county requires

consent of county commissioners 973

T**Taxes and Assessments:****Assessments:**

Bald Head Island fire protection 925

Drainage district actions validated; assessments 959

High Point underground electrical wiring assessments ... 919

Residential street light special assessments 923

Richfield delinquent utility bill collection procedures ... 1070

Taxes and Assessments:—continued**Assessments:—continued**

Richfield rural fire protection district tax levy	943
Solid Waste—see that heading	
Special projects district for taxpayer participation between Durham County, City of Durham, and Town of Chapel Hill	999
Strawberry assessments	1027
Sunset Beach cable television line special assessments . . .	875
Wake Forest utility line special assessments	873

Beer and wine tax

distributions to local governments	813; 1066(11)
--	---------------

Charlotte/Mecklenburg food/beverage sales tax refunds

to certain nonprofit and governmental entities	922
--	-----

Charter suspension notification requirements 1024(19)**Drug Taxes:**

Distributions to law enforcement agencies	1039
Interest and penalty payments	814

Egg promotion tax for processed eggs 1001**Federal tax lien registration 1047****Fuel Taxes:**

Diesel fuel user tax annual reports	1050
Fuel distributor/supplier bond requirements increased . . .	908
Fuel ethanol distillery tax credit sunset extended	814
Fuel sales tax exemption for small power producers	989
Motor carrier fuel use tax annual reports	1050

Ice sales tax exemption repealed 1068**Income Taxes:**

Corporate estimated tax payment threshold reduced	984
Income tax return filing extensions—payment of tax	984
Individual income tax tables	814

Inheritance Taxes:

Federal retirement benefit inheritance tax exemption repealed	970
Small estate settlements by clerks of court	1015

Insurance premium retaliatory tax law amendments 1069**Intangible Taxes:**

Intangibles tax distributions	813; 1066(11); 1074(12)
Intangibles tax dividend deductions	814

IRC taxable income/tax exemption reference updates 981**Inventory tax reimbursements to local governments . . . 1066(29)****Local Tax Reimbursement Reserve**

sequestration discouraged	1074(13)
-------------------------------------	----------

Mail Order Sales and Use Taxes:

Deposit in General Fund	1066(27)
Distributions to local governments	1066(27)

Motor Vehicle Taxes:

Ahoskie motor vehicle tax increased	893
Gastonia motor vehicle tax increased	1016

Taxes and Assessments:—continued**Motor Vehicle Taxes:—continued****Motor vehicle use tax revenue—**

technical amendment 1024(46)(a)

Motorcycle safety instruction program tax receipts 830

New Revenue Building funds 1074(2)

Occupancy Taxes:

Cary occupancy tax levy authorized 874

Charlotte convention center proceeds 821

Davie County occupancy/tourism development tax 928

Forsyth County additional occupancy tax levy 870

Long Beach occupancy tax penalty forgiveness 857

Pender County sales tax revenue distribution 901

Property Taxes:

Bad check penalties 1005

Cherokee County recreation/security service districts . . . 1049

County property tax levy rate limitations 1005(3)

Interest accrual on certain unpaid property taxes 960

Technical corrections 1005

Time limits modified for certain appeals 1005

Railroad franchise/license/privilege tax repealed 1002

Religious organization food sales and use tax exemption . . . 1060

Restaurant privilege license tax simplified 1073

Retirement Taxes:**Federal retirement benefit**

inheritance tax exemption repealed 970

Government retirement benefit tax credit 984

Retirement system compensation

for loss of tax exemption 1077

Revenue law technical changes 814, 945

Studies:

Air contaminant emission tax levy 850

Bed and breakfast inns 1078(2.2)

Economic Future Study Commission 1066(22)

Inheritance tax exemptions 970

Mail order sales taxes 1078(2.5)

Waste discharge to surface waters tax levy 850

Superfund lien filing notices 1047

Tax Credits:

Disabled dependent tax credit 984

Fuel ethanol distillery tax credit sunset extended 814

Government retirement benefit tax credit 984

N.C. Enterprise Corporation investment tax credits 848

Tax Deductions:

Intangibles tax dividend deductions 814

Mortgage interest tax deduction error corrected 984

National Guard tax deduction repealed 1002

Subchapter S Corporation shareholder

loss carryforward tax deductions 984

Taxes and Assessments:—continued

Tax enforcement program funds 984

Tax Refunds:

Debt setoff procedures 946

Durham County Hospital extension of time to
file application for sales and use tax refund 999

Tax refund anticipation loan regulations 881

UNC sales and use tax refunds for
contract and grant fund expenditures 936**Tax Returns:**

Income tax return filing extensions—payment of tax 984

Franchise tax return filing extensions—payment of tax ... 984

Tax Withholding:

Accelerated payments 945

Employer withholding
payment workload reserve funds 1074(7)**Utility tax accelerated payments; distributions**

to local governments 813; 814; 945; 1066(11)

Teachers—see Education**Teachers' and State Employees'****Comprehensive Major Medical Plan:****Hospital and Medical Benefits,**

Committee on Employee—appointments 1038(19.1)

Insurance fraud reporting and investigation 1054

Retired State law enforcement officer

State Health Plan eligibility 1074(22)

Technical amendment 1024(2)

Technological Development Authority—

incubator facility grants 952

Telephone:

Utility infrastructure right-of-way acquisition 962

Utility tax accelerated payments; distributions
to local governments 813; 814; 945; 1066(11)**Television:****Study—Open Government Through Public**

Telecommunications Study Commission created ... 1078(VI)

Sunset Beach cable television line special assessments 875

Titles:

Motor vehicle damage disclosures 916

Motor vehicle salvage title law clarified 916

Topsail Beach, Town of—contracts

and purchases governed by general law 846

Transportation:

Aviation—see that heading

Boating—see that heading

Ferries—see that heading

Motor Vehicles—see that heading

Transportation:—continued

Parking—see that heading

Ports—see that heading

Public transportation authority

bonds and notes—technical amendment 1024(41)

Railroads—see that heading

Roads and Highways—see that heading

Signs—see that heading

Speed Limits—see that heading

Study—public transportation financing 1078(2.4)

Travel and Tourism—see that heading

Transportation, State Department of:

Anticipated revenues authorized 1066(140), (141)

Appropriations:

Capital improvements 1074(8)

Current operations:

Ferry operations 1066(4)

General Fund 1066(3)

Highway Fund 1066(4)

Motor Vehicles, Division of 1066(4)

Railroads 1066(3)

State aid—aeronautics 1066(3)

State aid—municipalities 1066(5)

Bridge debris removal requirements clarified 1066(139)

Construction contract retainage deposits 1074(38)

Disadvantaged business contracts 1066(143)

DMV vehicles equipped with bells and sirens 1020

Driver training program funding 1066(144)

Roads and Highways—see that heading

Special appropriations repealed 1066(142)

Studies:

Defensive Driving—Citation Dismissal Task Force 1065

Disadvantaged business contracts 1066(143)

Drivers education 1066(145)

Transportation computing center position funds 1066(138)

Utility infrastructure right-of-way acquisition 962

Transylvania County:

Land condemnation/acquisition by local governments

outside county requires consent of commissioners 1061

Solid waste fee collection 938

Travel and Tourism:

Celebration 1991 activities 1066(56)

Economic development publication costs 1066(55)

Occupancy and Tourism Development Taxes—

see Taxes and Assessments

Travel and Tourism transfer of advertising funds 1074(36)

Trees:

- Forestry—see that heading
- N.C. Arboretum funds 1074(2)

Trent Woods, Town of:

- Annexation of certain described territory 947
- Compensation of municipal officers 947

Tuition:

- Aid to private colleges clarified 1066(80)
- Barber school bond requirements 824
- Community college tuition increase 1066(88)
- Cosmetic art school bond requirements 824
- Nurses aide training program bond requirements 824
- Proprietary school bond requirements 824
- Radio Emergency Association Citizens Team
(REACT) community college tuition waiver 915

Studies:

- Higher education opportunity 1066(85)
- Public attorney education assistance 1078(2.1)(4)
- Rural economic development scholarships 1066(84)

- Teacher scholarship loan program expanded 1066(95)

Teaching Fellows Program:

- Appointments 1038(19)
- Loans forgiven in cases of death or disability .. 1066(101)(a)
- Revolving fund uses 1066(101)(b)

- UNC in-State tuition admissions status clarified 907

- UNC increased course fee budgeting procedures 936

- Veterans and military education program transferred from
community colleges to UNC Board of Governors 997

U**Union County:**

- Fire plow operation funds 1066(46)
- Land condemnation/acquisition by local governments
outside county requires consent of commissioners 973
- Ranger funds 1066(46)

University of North Carolina:

- A&T State University funds 1066(3)

- Aid to private colleges clarified 1066(80)

Appalachian State University:

- Academic Support Building funds 1074(2)
- Funds 1066(3)
- Student Activities Center funds 1074(2)
- Student Union Building addition 965

Appropriations:

- Area Health Education Centers 1066(3); 1074(2)
- Campus management incentives and flexibility 936
- Capital improvements 965; 1074(2), (3)

University of North Carolina:—continued

Appropriations:—continued

Course fee budgeting procedures	936
Current operations	1066(3)
Nonrecurring State aid	1074(6)
N.C. Arboretum	1074(2)
N.C. School of the Arts	1066(3)
N.C. Science and Math High School	1066(3)
Over-realized receipts	936
Purchasing procedures	936
Sales and use tax refunds for contract and grant fund expenditures	936
State aid	1066(3)
Centennial celebration funds	1066(81)
East Carolina University:	
Dining facility financing	965
Dormitory renovations	965
Health Affairs funds	1066(3)
Joyner Library addition funds	1074(2)
MRI funds	1066(86)
Recreation center financing	965
Regional Advancement Center funds	1074(2)
Elizabeth City State University funds	1066(3)
Fayetteville State University funds	1066(3); 1074(2)
In-State tuition admissions status clarified	907
N.C. Central University funds	1066(3)
N.C. State University:	
Agricultural Extension Service funds	1066(3)
Agricultural Research Service funds	1066(3)
Agriculture program funds	1074(3)
Centennial Center funds	1074(2)
Engineering Graduate Center funds	1074(2), (10)(b)
Horticultural Research Station funds	1074(3)
Research Triangle World Trade Center funds	1074(6)
Payroll deductions for UNC charities and athletics ...	1066(82)
Pembroke State University funds	1066(3)
Public school assistance program	936
Studies:	
Education Oversight Committee	1066(115)
Higher education opportunity	1066(85)
Infrastructure bonds	1078(2.1)(5)
Nurse midwifery education programs	1066(83)
Rural planning and development degree programs	1066(84)
UNC position classifications	936(6)
University Employees' Optional Retirement Program	
employer contribution rate increased ...	1066(34); 1077(17)
UNC-Asheville funds	1066(3); 1074(2)
UNC-Chapel Hill:	
Area Health Education Centers funds	1066(3)

University of North Carolina:—continued

UNC—Chapel Hill:—continued

Autism Living and Learning Center funds	1074(3)
Health Affairs funds	1066(3)
Office building financing	965
Recreation center financing	965
Residence hall renovations	965
School of Business funds	1074(2)
Social Work Building funds	1074(2)
Storage facility financing	965
UNC—Charlotte funds	1066(3)
UNC employee flexible compensation plans	1059
UNC—Greensboro funds	967; 1066(3)
UNC Hospitals at Chapel Hill:	
Current operations appropriations	1066(3)
Neuropsychiatric Hospital financing	965
Sales and use tax refunds	936
Technical amendment	1024(27)
UNC—Wilmington funds	1066(3)
Veterans and military education program transferred from community colleges to UNC Board of Governors	997
Western Carolina University funds	965; 1066(3)
Winston-Salem State University funds	1066(3)

Utilities:

Accelerated tax payments	813; 814; 945; 1066(11)
Bladen County gas line construction authorized	839
Fuel distributor and supplier bond requirements	908
Fuel ethanol distillery tax credit sunset extended	814
Fuel sales tax exemption for small power producers	989
High Point underground electrical wiring assessments	919
Low Income Energy Block Grant funds	1066(6)
Natural gas service regulatory authority	962
Nuclear facility annual fee increased for emergency response activities	964; 1066(53)(e)
Public utility regulatory fee percentage rate	937
Richfield delinquent utility bill collection procedures	1070
Right-of-way dedications—technical amendment	1024(39)
Studies:	
Energy Assurance Study Commission continued	1078(III)
Infrastructure bonds	1078(2.1)(5)
Local stormwater utility financing	1062
Sunset Beach cable television line special assessments	875
Tax distributions to local governments	813; 814; 945; 1066(11)
Technical amendments	1024(13)–(15)
Utilities Commission inspector vehicles not required to be equipped with bells and sirens	1020
Utility infrastructure right-of-way acquisition	962
Wake Forest utility line special assessments	873

Utilities:—continued

Water and Sewer Systems—see that heading

Winston-Salem/Forsyth County

utility commission eminent domain procedures 849

V**Veterans:****Studies:**

Veterans Home LRC Study Committee 1078(2.1)(3)

Veterans Home Study Commission 1074(20)

Veterans and military education program transferred from
community colleges to UNC Board of Governors 997

Veterans cemetery funds 1074(2)

Veterans employment program funds 1066(58)(b)

Veterans Home Study Commission—creation 1074(20)**Victims Compensation:**

Victims compensation eligibility 1066(131)

Victims compensation extended for certain minors 898

Vocational Education:

Pitt Community College vocational building funds 1074(2)

Proprietary Schools—see that heading

Tech Prep program funds 1066(58)(c)–(d), (89)

Volunteers:**Rescue Squad Workers' Relief Fund:**

Administration costs 1066(33)

Board of Trustee appointments 1066(33)

Motor vehicle inspection fee receipts 1066(33)

Social Services Block Grant funds 1066(6)**Volunteer Rescue/EMS Fund:**

Fire and Rescue Commission funds 1066(33)

Grant eligibility 1066(33)

Motor vehicle inspection fee receipts 1066(33)

W**Wake County:**

Cary, Town of—see that heading

Garner, Town of—see that heading

Raleigh, City of—see that heading

Unmarked human service vehicles 856

Wake Forest, Town of—see that heading

Wake Forest, Town of:

Utility line special assessments 873

Voluntary satellite annexation procedures 882

Warranties —home appliance warranty definition repealed	1021
Warren County —registration of land; entry permits	897
Warsaw, Town of —extraterritorial zoning jurisdiction	1006
Washington County:	
Latham House matching funds eliminated	1066(20)
Museum curator funds from local newspaper microfilming grant	1066(18)
Solid waste fee collection	974
Waste Management:	
Hazardous Waste—see that heading	
Low-Level Radioactive Waste—see that heading	
Pollution—see that heading	
Solid Waste—see that heading	
Water and Sewer Systems—see that heading	
Watauga County:	
Register of deeds vacancies	1056
Roadside hunting prohibitions	812
Solid waste fee collection	905
Water and Sewer Systems:	
Chemical and portable toilets— sewage treatment and disposal	1075
Clean water and sewer program funds	1074(2)–(3), (14)–(15)
Coastal Resources—see that heading	
Correction wastewater/water system improvements	1074(2)
Dam construction/removal application fees	976; 1066(53)(c)
Dam safety civil penalty assessments	1036
Drainage commissioner selection procedures modified	959
Drainage district actions validated	959
Erosion control plan approval fees	906; 1066(53)(b)
Gates County correctional center wastewater treatment system shared with schools	1066(120)
Lake Adger “slow-no-wake” area technical correction	818
Navigable water land claim resolution period extended	869
Oil discharge civil penalty assessments	1036
Oil discharge criminal penalties increased	1045; 1075(8)
Pool/spa permit exemptions—technical amendment	1024(33)
Raleigh stormwater regulation ordinances	1043
Reports:	
Dam safety program biennial report	976; 1066(53)(c)
Erosion control plan approval program	906; 1066(53)(b)
Richfield delinquent utility bill collection procedures	1070
Rural Water Association grant-in-aid funds	1074(6)
Sanitary sewage system installation/operator certification effective date delayed	850
Southeastern Farmers Market wastewater treatment facility funds	1074(3)

Water and Sewer Systems:—continued**Studies:**

- Infrastructure bonds 1078(2.1)(5)
- Local stormwater utility financing 1062
- Small and individual system
 - water and wastewater needs 1078(2.1)(1)
- State and local government
 - recycling and waste management plan 1066(40)
- Waste discharge to surface waters tax levy 850
- Waste stream analysis 1066(40)
- Wastewater Treatment Plant Operators Certification
 - Commission organization, powers, duties 850
- Water resources development projects 1074(3), (34)
- Utilities—see that heading
- Wastewater discharge notification requirements . . . 951; 1075(6)
- Wastewater treatment violation penalties 951; 1075(6)
- Wastewater Treatment Plant Operators Certification
 - Commission sanitary sewage system representation 850
- Water and Air Resources Board replaced by Environmental
 - Management Commission 1004(43); 1075(3)
- Water and sewer condemnor quick-take authority 871
- Water discharge permit requirements 1037
- Water fluoridation block grant funds 1066(6)
- Water pollution civil penalty assessments 1036
- Water quality criminal penalties increased 1045; 1075(8)
- Water Quality Section lapsed salary
 - funds to correct budgeting error 1066(38)
- Water resources definition—technical amendment . . . 1024(34)
- Water resources development project funds 1074(3), (34)
- Water transfer moratorium 954
- Water treatment facility penalties—
 - technical amendment 1024(18)
- Watershed classification—technical amendment 1024(1)
- Watershed reclassifications—development of landfills
 - for nonhazardous solid waste disposal delayed 1014
- Well construction civil penalty assessments 1036

Waterslides—insurance limitation sunset repealed 914

Watha, Town of—1989 election validated 884

Weapons:

- Armory construction funds 1074(3)
- Davidson County firearm and pellet gun ordinances 852
- Davie County firearm and pellet gun ordinance 929
- Hunting—see that heading
- Martin County firearm and rifle prohibitions 810
- Pender County weapon permits issued by sheriff 910
- Warren County land registration; entry permits 897
- Watauga County roadside hunting prohibitions 812

Wells —well construction civil penalty assessments	1036
Whiteville, City of —mayor's right to vote in city council proceedings	828
Wildlife:	
Caswell Beach sea turtle sanctuary	858
Caswell County migratory wildfowl protections	808
Fish and Fishing—see that heading	
Hunting—see that heading	
Nongame Wildlife Advisory Committee expenses	1066(48)
Zoos—see that heading	
Wildlife Commission funds	1066(47)
Wilkes County —land condemnation/acquisition by local governments outside county requires consent of county commissioners	1061
Williamston, Town of —commissioners election procedures	883
Wills and Estates:	
Federal retirement benefit inheritance tax exemption repealed	970
Joint, trust, personal agency accounts—technical changes ...	866
Joint tenancy with right of survivorship	891
Small estate settlements by clerks of superior court	1015
Study—inheritance tax exemptions	970
Technical amendment	1024(11)
Will caveat proceeding settlement agreement judgments	949
Wilmington, City of:	
Shellfish sanitation lab facility funds	1074(3)
Wilmington Harbor passing lane study	1074(34)
Wilmington Harbor turns and bends study	1074(34)
Wilson County —Elm City corporate limits reduced	934
Windsor, Town of —firemen's relief fund excess proceeds for firefighting equipment expenditures	930
Winston-Salem, City of:	
Fair housing ordinance amendments	864
Policemen's Retirement Fund investments	1026
Utility commission eminent domain procedures	849
Workers Compensation:	
Disability Income Plan coverage to employees on leaves of absence receiving workers compensation benefits ...	1032
Mutual Workers' Compensation Security Fund assessment ..	985

Z

Zoning:

Bailey zoning notice requirements	904
Cherokee County recreation/security district referendum	1049
Down zoning notification procedures	980

Zoning:—continued

Durham County rezoning and site development plans	950
High Point zoning procedures	918
Mocksville extraterritorial planning jurisdiction	853
Pilot Mountain extraterritorial zoning jurisdiction	861
Right-of-way dedications—technical amendment	1024(39)
Vested rights established upon approval of site specific and phased development plans	996
Warsaw extraterritorial zoning jurisdiction	1006

Zoos:

N.C. Zoological Park funds	1074(2), (4)
Study—infrastructure bonds	1078(2.1)(5)

INDEX TO THE RESOLUTIONS 1989 GENERAL ASSEMBLY REGULAR SESSION 1990

A

*Resolution
Number*

Adjournment:

Adjournment July 20, 1990, to reconvene July 26, 1990 72

Adjournment *Sine Die* 75

Appropriations:

State budget process modifications 76

B

Blue, Herbert Clifton 59

C

Commemorations and Celebrations:

Mount Mitchell State Park 75th Anniversary 64

Turkey Lovers' Month 46

D

Deceased Persons (see also General Assembly:

Deceased former members):

McNeill, Jr., John Knox 46

Mills, Jr., Fred Moore 66

Mitchell, Elisha 64

F

Frink, Samuel Benjamin 69

G

General Assembly:

Adjournment:

Adjournment July 20, 1990, to reconvene July 26, 1990 72

Adjournment *sine die* 75

Bill deadlines extended 35

Bills specially authorized:

Adoptions—probationary time between interlocutory
decree and final order in private adoptions 63

ABC elections in certain cities located in two counties . . .	68
Blue, Herbert Clifton—memorial	38
Child support guideline effective date delay	57
County recreation and security service districts	41
Crematory operator licensure	47, 55
Drainage commissioner selection; assessment notices	58
Egg promotion tax to include processed eggs	52
Electrology licensure	70
Exceptional children's appeals process amendments	49
Frink, Samuel Benjamin—memorial	45, 61
Governor—invitation to address joint session	43
Handicapped parking—maximum fine increase	40
Hazardous waste cleanup costs— notice of lien filing requirements	39
Hazardous waste facility resident inspectors	73
Income tax refund period	71
McNeill, Jr., John Knox—memorial	36
Mills, Jr., Fred Moore—memorial	37
Motor vehicle releasing unlawful	42
Municipal redistricting rules and procedures	62
Parole hearing notifications	53
Parole restrictions in certain murder cases	53
Property tax interest accruals	48
Railroad/motor vehicle safety statute improvements	54
Speaker and Speaker Pro Tempore limited terms	50
Speeding offenses with no insurance points/surcharges . . .	65
State budget process modifications	74
Turkey Lovers' Month—recognition	36
Victims Compensation extended for certain minors	51
Waterslide insurance limitation sunset repeal	56
Watkins, William T. "Billy"—memorial	60
Deceased former members:	
Blue, Herbert Clifton	59
Frink, Samuel Benjamin	69
Watkins, William T. "Billy"	67
Joint session—invitation to Governor to address	44
Speaker and Speaker Pro Tempore limited terms	50
Governor—	
Invitation to address joint session of General Assembly	44

M

McNeill, Jr., John Knox	46
Mills, Jr., Fred Moore	66
Mitchell, Elisha	64

R

Redistricting—

1990 census municipal redistricting rules and procedures 62

W

Watkins, William T. “Billy” 67

